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February 23, 2012

Planning Commissioners
Winona, Minnesota 55987

Dear Commissioner:

The next meeting of the Planning Commission will be held on **Monday, February 27, 2012, at 4:30 p.m. in the Council Chambers** of the Winona City Hall.

1. **Call to Order**
2. **Minutes – February 13, 2012**
3. **Public Hearing – Amendment to City Code Chapter 43**
4. **Sand Processing and Transportation Facilities CUP Amendment**
5. **Sensitive Land Development Ordinance Amendments**
6. **Other Business**
7. **Adjournment**

Sincerely,

Mark Moeller
City Planner

PLANNING COMMISSION MINUTES

DATE:	February 13, 2012
TIME:	4:30 p.m.
PRESENT:	Chairman Porter; Commissioners Eyden, Boettcher, Buelow Ballard and Olson
ABSENT:	Commissioners Gromek and Briggs
STAFF PRESENT:	City Planner, Mark Moeller and Assistant City Planner, Carlos Espinosa

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NOTE: These minutes have been transcribed directly from the recorded tapes.

The meeting was called to order at 4:30 p.m. by Chairman Porter.

Approval of Minutes – January 23, 2012

The minutes from the Commission's meeting of January 23, 2012 were reviewed, and upon motion by Commissioner Boettcher, and second by Commissioner Eyden, were unanimously approved as submitted.

Public Hearing - Sand Processing and Transportation Facilities CUP Amendment

Chairman Porter introduced this item and called on Carlos Espinosa, Assistant City Planner, to provide an overview of it. Mr. Espinosa noted that he had, in the Commission's agenda package, included information on sand processing and transportation facilities and relation to a conditional use permit. The topic of frac sand operations in southeastern Minnesota has recently become very prominent. Most of the discussion in the Winona area has focused on mining proposals that were at the Winona County Board level. However, as the Planning Commission is aware, there are several frac sand operations currently functioning in the City of Winona. Staff presented to the City Council at 2 public meetings where the public was asked to come and provide us with any kind of input or concerns about frac sand processing occurring in general or in the City. As a result of those meetings, and also additional comments and concerns from residents and from the City Council, staff has put together the proposal that is front of you tonight. This is a proposal for a conditional use permit in an M-2 (General Manufacturing) Zone. What the conditional use permit would do is require new applicants for sand processing and transportation facilities to obtain a conditional use permit from the Board of Adjustment.

A Conditional Use Permit (CUP) is a more appropriate tool to use with these land uses for four main reasons:

1) The expanding scope of sand operations in the region;
2) The potential off-site impacts of operations in the City (e.g. noise from truck traffic, dust, etc.);
3) The ability to address specific concerns before a project is approved; and
4) The ability to include additional conditions in accordance with City Code to promote the City's health, safety, and general welfare.

It would be up to the applicant to demonstrate that they are complying with that condition.

The attached draft ordinance (Attachment A) outlines proposed code amendments that would make the facilities subject to a CUP. The Conditional Use Permit would allow them only in M-2 zoning districts; those are the zoning districts that the operations are currently occurring in.

Currently, there are 38 listed conditional uses in the M-2 zoning district. A CUP review by the Board of Adjustment is required for each. The process for M-2 district CUP review is outlined in Section 43.30 of the City Code. The process examines proposed conditional uses in accordance with the performance standards listed in Section 43.33. Basically, if a proposed use meets the performance standards, a CUP can be granted. If the proposed use may cause emission of "dangerous or objectionable" elements, a report by a specialist may be required by the applicant to help answer the questions and better address any kind of concerns and issues that may arise.

We have a number of general conditions in the performance standard section of the code. What the proposal would do, is add, in addition to those general conditions, a few specific Conditional Use Permit provisions as follows:

1) Hard Surfacing – Asphalt or concrete surfacing shall be required in any truck or equipment maneuvering area. This condition is included because the amount of on-site truck traffic has the potential to create dust that travels to adjacent properties. This issue has been observed at some existing frac sand operations.

2) Truck Route Designation – All trucks entering and leaving such facilities shall enter and exit Winona on designated truck routes. Such routes shall avoid residentially zoned property to the greatest extent possible. This condition is included so that trucks avoid residential areas and for the City of Winona to have designated routes on record.

3) Stockpile Covering – Stockpiles undisturbed for more than one week shall be covered. This condition is included to help prevent the potential for windblown dust from undisturbed stockpiles.

4) Stockpile Watering – Uncovered stockpiles shall be watered regularly to prevent surface areas from drying out and becoming susceptible to wind erosion. This condition is included to help prevent the potential for windblown dust from uncovered stockpiles and the potential for particulate matter generation (see report to Council for a discussion on particulate matter).

5) Hours of Operation – Hours of operation shall be limited to 7 a.m. – 10 p.m. This condition is included to limit the impact of sand operations on residential areas. Staff's intent with this condition is to eliminate the potential for noise issues from truck traffic and vehicles/machinery (especially those with back-up alarms) after 10 p.m. As such, the Commission may want to discuss allowing equipment (e.g. dryers, screeners, etc.) and machinery without back up alarms to operate after 10 p.m. provided noise ordinance requirements are met.

6) Landscaping and Screening – Sufficient landscaping and screening, as approved by the City of Winona, shall be provided to mitigate visual impacts of operations on adjacent properties. This condition is included to help improve the aesthetics of projects as appropriate.

7) Contact Information – Facility operators shall provide current contact information to the City of Winona to facilitate prompt response to concerns.

8) Permits and Reports on File – Any applicable state or federal permits shall be placed on file at the City of Winona. Any reports generated to fulfill permit requirements shall be submitted to the City of Winona.

There are some proposed additions to the Noise Pollution Ordinance (Chapter 39):

Additional zones - The A-G, RMHP, R-S, R-R, and R-1.5 zoning districts shall be added to the noise ordinance.

The zones that are listed have been unintentionally left out of the noise ordinance. The proposed amendments add these zones as follows:

	Day (7 a.m. - 10 p.m.)		Night (10 p.m. - 7 a.m.)	
Zoning District	L_{50}	L_{10}	L_{50}	L_{10}
RMHP, R-S, R-R, R-1.5	60	65	50	55
R-1, R-2, R-3, C-1	60	65	50	55
B-1, B-2, B-3	65	70	65	70
B-2.5, M-1, M-2, A-G	75	80	75	80

There will be additions to two Performance Standards:

1. Dust – All activities shall comply with applicable state law, rules and local ordinances for Particulate Matter generation and any stockpiles (including sand and dirt) which produce windblown dust shall be covered.

2. Noise – In accordance with and measured at locations stated in Chapter 39.

These proposed amendments address potential air quality and noise issues associated with sand processing operations.

The Commission is an advisory role, the Commission may make a recommendation to either approve, deny, etc. This recommendation would be sent to Council. You could also not make a recommendation, this is what happened at the Planning Commission at the Winona County level, a recommendation was not made and the issue still went forward to the County. The Commission may also table the issue if more time is needed.

At this point, Chairman Porter opened the public hearing and called for any person who wished to speak to present first their name and address.

It was commented by someone in the audience if it was appropriate to hold a hearing where people could not get in the room. Chairman Porter explained that we tried different venues to schedule other rooms but were unable to reschedule. Everyone is provided the opportunity to come forward to speak and information will be passed on the website with regards to recommendations. The opportunity to speak is there. We apologize for the venue but it is all we have. Craig Porter asked everyone to speak as loud as possible when speaking.

Jim Gurley, 22505 Betty Jane Drive Winona, is very upset that we got to this point without public discussion/debate aside from the few incidences that Mr. Espinosa mentioned. This debate should have happened last spring or summer before we got to this point. Shocked and outraged that the bogus so called air quality study that has been debunked by the Minnesota Pollution Control Agency is still in Ms. Judith Bodway's materials. This shows a complete disregard for our health. You are supposed to protect our health, safety and welfare. Your Commission allowed this situation and now you owe it to every one of us residence to make it right. I urge you to recommend to the City Council a one year moratorium on all Frac Sand Mining, Processing and Transporting in Winona until the City has put into the City Code a clear and public procedure for inspecting, monitoring and enforcing policies that are recommended by an Environmental Impact Statement (EIS). The City should arrange this EIS. All costs for this EIS along with inspecting, monitoring and enforcing must be paid by the frac sand processing and mine owners and not by City taxpayers. We all want economic development and we want job creation but this frac sand is not the way to do that.

Jim Riddle, 31762 Wiscoy Ridge Rd Winona, serves as Chair of the Winona County Soil and Water Conservation District Board, and in that capacity I would like to remind the City of Winona Officials that the City is in the Conservation District and we commonly provide expert advice on Conditional Use Requests of the County and on ordinance changes at the County but have not been contacted or provided input on these

proposed changes which do have massive environmental impact. We can provide input on such issues as erosion control; specifically wind erosion, landscaping, water quality and quantity issues. I am very disturbed in seeing that water quality is not being addressed in the draft that has been presented before you. I did go on the website all day today and contacted City staff and the draft was not available on the website. I find that this industry is bad for business. It is bad for Winona. The negative impacts on quality of life are already apparent just in the last year and it's the tax payers who are going to foot the bill unless something is put in place to capture the money to cover the damages and this is bad for our bridge. We can't operate businesses in the City of Winona if the bridge is destroyed and who is enforcing the weight limits on the bridge. It is obvious that no one is. The City has an inherent interest in making sure that the bridge is protected and kept open so I encourage you to address those things.

Marie Kovecsi, 133 Whispering Lane, would like to talk to some of the CUP conditions on page 3 of the agenda item. A condition that is not mentioned is anything about blasting and we currently have an operating mine that is blasting. The hard surfacing is a given. The truck route designation-is the truck routes safe for the volume of traffic that they will be handling? We have already seen trucks struggling to turn off 4th Street coming off the bridge. It is the volume of traffic that we have to plan for or that we should have already planned for. This designating truck routes doesn't have any impact on the trucks coming across the bridge from Wisconsin or any of the Houston or Fillmore trucks so that issue needs to be looked at more seriously. The watering – how much water is used, we don't know, where is the water coming from, we don't know, where is it going after its' been used, we don't know, does it have chemicals added, we don't know. I would ask that you would consider these conditions to be purely window dressings. They are not applicable to protect the health, safety and the welfare of Winona citizens and I would ask you to look at the option of doing an Environmental Impact Study on the area for all of these businesses before we completely ruin what we have left of our area.

Matthew Byrnes, 832 West Broadway, explained that frac sand is an issue that is making some people a whole lot of money but for everyone else it is making our lives worse and will continue to make our lives worse. We know where this frac sand is going; we know that it is going to hydraulic fracturing which the EPA says is poisoning American waterways. We know that we have been told that if frac sand continues to go at the rates that it is mined that we will need a new bridge in two years. As a taxpayer, I don't want to pay for a new bridge in two years. More trucks mean more danger, more accidents. We know that this will use a lot of water and that there are already complaints about the blasting. These conditions are a baby step when what you need is a giant leap.

Marilyn Bjorlo, 1890 West Fourth Street, explained that her property abuts Mr. Mikrut's sand processing plant that he plans to erect. My husband and I, the neighbors are wondering how many tons of sand are going to go through this place, how many monitors are there going to be around to monitor the air quality and according to the site

plan, there will be holding ponds. Have you seen or even asked for any material data safety sheets so that you know what chemicals will be stored at that site. There is and will be a lot of dust. Are the conveyors that he is going to use, will they be covered? Are the trucks going to be covered? Is this facility bonded, so if the retaining ponds are breached and fluent flows into the nearby properties will the property owners be compensated? What fuel is going to be used to run the dryers? How long are these plants going to be operating? Have there been any OSHA violations in any singular plant? Will there be any development costs to the City of Winona? If you don't know the answers to the questions that are being presented tonight, why are we allowing these plants in our City? The City has much to offer to its citizens and visitors we would like to enjoy an outstanding environment to raise our families to work in and retire to.

Bruno Borsari, 216 Liberty Street, thanked the Commission for the opportunity to speak. I am a scientist and biologist and we are on the brink of collision with an impact upon the environment that is going to change the connotations of the county forever. Winona County is the most biodiverse in the whole state of Minnesota. Things are being looked at the very superficial level here and the impact of land management and land use if the hysteria for this frac sand mining is not going to be controlled. It is already affecting people's lives and I see the distress of having the operation here in town although luckily I live at least 1.5 miles away from it. However, I think that a more thorough study that is objective that is scientifically evaluated is a mandate for the sake of transparency to all citizens. I would like to see some vigor in putting together a team of experts who can monitor and evaluate what impact is going to happen on soil, air, water, and health.

Andrew Puetz, 121 Huff, is representing Chrysler Winona. We have experienced the economic fallout with all the sand that has fallen. Two years ago, we decided to invest 2 million dollars into a new facility and get rid of our old one. We did it in downtown which is supposedly trying to be revitalized. We didn't know that we would compete with a sand pile. This is very detrimental to us; the customers regularly ask us what color are our cars. We are in the business that has to have clean goods and we know that we have to wash the cars but at some level these things look like they are in the middle of Saudi Arabia. It is very disturbing how bad our cars look. It also affects the paint the air filters and the underneath of the cars is extremely dirty. We want to know why a new business can be so detrimental to an existing business. We understand that businesses need to start and keep these areas thriving but when it comes down to ruining other businesses that already exist it is very difficult. We spend over $2,000 per month cleaning our vehicles; they have to be hand washed because the stuff is so abrasive to the vehicle that you can't take it through a carwash because it doesn't get the whole thing off. It is extremely difficult if all this stuff is affecting the paint and exterior of the vehicle just think what it is doing to our lawns and everything else. We need to ask ourselves a lot of questions about this.

Marianna Byman, 327 West Wabasha Winona, explained that she is about 3 ½ blocks from the frac sand processing. We can tell the sand is blowing. It is in the air and streets. I am concerned about the air quality and the neighborhoods and the university

area. I am really concerned about the hours of operation, I think till 10:00 p.m. is excessive. I do not think that that is at all fair to the residents of Winona to have to have trucks coming till 10:00 at night. I have a farm in Buffalo County and we went through this in the fall because a mine is going in a quarter of a mile from my kitchen window but even in that situation, as little as Buffalo County has done, at least they put some limits on the hours of operation and they stop everything at 6:00 pm and only Monday through Friday. I think Winona could at least go with that sort of limitation of trucks coming in.

Michael Leutgeb Munson, 802 West Wabasha, explained that he believes this is a public safety disaster and the staff's conditions perpetuate this public safety disaster by laying out the welcome mat to this industry to destroy our bridge, destroy our town, while enabling this. Hours of operation 7 a.m. – 10 p.m. is a complete joke. The other conditions are complete jokes which lead me to believe that we can't do anything to stop this. This is a public safety disaster. How is this good for our City? How will this not get worse than it already is?

Diane Leutgeb Munson, 802 West Wabasha, explained that she understands that you are an advisory commission and that you are addressing adopting a CUP but obviously you are doing things that are much bigger than that. This is a really crucial moment for our community and you do have power as an advisory commission. I think we are all looking to you and that is why we came here and that is why we have been showing up at County meetings and City meetings. We are asking you to do more than this, do more than what this document says, take a bigger step, tell us that you're really hearing what we are saying and just go a little bit farther. We are all trying to do the same thing; these are scary moments for all of us. At the end of this meeting you have a choice, and we ask that you make the right one.

Kelly Kirk, Saratoga Township, explained that she is not opposed to one mine or two mines or even three but before we go into an adventure like this what I'd really like to know is how many mines or washing facilities or trucks that cross the bridge-what is our max? It would be really nice to know what that max. is before we go forward instead of doing this piece by piece.

Alison Denio, 358 West Fourth Street Winona, explained that she lives 2 blocks from the Mount Frac. What I bring to you today is my real experience with this. I face this on a daily basis. We have upper respiratory issues in our household, my daughter has asthma now and my son is constantly coughing. I don't want them outside. We use to run before we even knew what this stuff was. The amounts of trucks are out of control-they go flying by us. We are sitting on our bikes on the side of the road waiting. It is aggressive. It is a really awful environment. The street cleaners go through and you can't see anything because the dust is unbelievable so please go down there because this is my neighborhood. You might not see it on a daily basis but it is out of control. And if it is like this already what is going to happen if it continues. You add one more truck-one more truck-do you know how much sand you are dumping? That is not one

hill anymore-they started adding more and now it is one whole block. It is not Mount Frac let's call it Block Frac.

James Johnson, 802 West Broadway, explained that he appreciates the attention of what you guys are doing today and understand that you are just an advisory board and that you can't solve all of our problems. I think it is awesome that you guys are being proactive about wanting to ensure that future processing is properly regulated. We need you to protect us from the current impacts this is having on our lives. Here in the City we do need better truck routes, so we all here know that we need fewer trucks. He referenced Dave Kramer, Winona County Highway Engineers, report regarding the traffic on the bridge and destroying City and County roads. He referenced Biesanz blasting and stressed that we need environmental studies to address these issue. We do not need baby steps we need huge, huge leaps. I know that is asking a lot of you guys but this is the time it is now.

Don Nelson, 478 East Sanborn, explained that his concern is where this all is going and what is it doing to the people where it is going to. A few years back when my youngest daughter worked in Minneapolis and she commuted back and forth across the 35W Bridge. A bridge that is regulated by the State, Federal and everyone else. That bridge went down 20 minutes after she drove over it. We stopped and watched the television and we watched all of the emergency vehicles, cars, etc. Are we prepared for that kind of a natural disaster-if that bridge goes down?

Eric Johnsrud, Attorney here in Winona, has been asked to address the Planning Commission by Mikrut Properties, Winona Aggregate, Modern Transport, Bryant Valley Excavating, Bob Hemker and Seven Rivers Intermodal Terminals. On behalf of those entities and individuals you may find that the memorandum prepared by Ms. Bodway and Mr. Espinosa dated January 6, 2012 is well reasoned and is well researched. Specifically, I wish to quote from page 17 of the memorandum in the next steps section which states as follows: "Because of the non-hazardous qualities of sand processing, staff would suggest incorporating sand processing into the M-2 zone as a permitted use subject to certain provisions." One final comment with regard to the proposed ordinance, it is actually part of the ordinance, that's dealing with adding language as number 10 Additional Requirements. This is going to change how Conditional Use Permits are addressed under the zoning ordinance and there is concern about this language as to the breath of the language as it being overbroad, as it being vague, as it may add nonobjective standard to Conditional Use Permit determinations.

Joe Morse, 23375 Buffalo Ridge Rd Winona, comes into the City every day for business and the business that I am involved in and when I come every day is that I am a professional guardian and conservator for 8 individuals who are disabled and who live and work in the City of Winona. I am appointed by the District Court to be responsible for the health safety and well being of those 8 disabled people. I am really concerned about as it was mentioned earlier about the health affect, potentially silica sand and the air quality that it potentially represents a hazard. The City must have thought that there

was a potential air quality problem-they authorized a study by one of the processing facilities here in town to study the air quality. As we know the pollution control agency completely debunked that study – it is completely without value and had no bearing on whether the air quality in the City was good or bad. So here we have a study that was done authorized by the City perhaps paid for by the City and then promoted by City staff that this was to assure us that the air quality in our City was OK and then the pollution control agency said it is without merit. It is in the January 6th Memorandum from Judith Bodway and Carlos Espinosa. The City thought there was an air quality problem but essentially nothing to address it. How do you expect us to trust the staff when they do that kind of thing? How is it decided by the City to hire a processing facility to do the study and who made the decision?

Stephen Doerr, Winona, Minnesota, explained that Mount Frac is likely a small part of the solution to the crack in US economy. I discourage you from increasing regulation with operations specifically here in the City of Winona, where it not only gives an advantage to our Chinese counterparts which are selling ceramic replacements for an actual sand reported to be 80 some percent in the North Dakota area and after visiting Texas this last winter, I also see that the warehouses are full of big Chinese super sacks of product competing the sands that are sent to Texas as well. I strongly encourage you to look at the City population versus those that are against this. The City of Winona is logging town or it once was a logging town. To my knowledge it is now a port city, in addition to supporting other businesses. I myself was concerned about these hoaxes that you are hearing today. I did a lot of research before I got into this business and thank goodness I have been employed to support my family.

Hans Madland, 710 Main Street, explained that people are here to express their opinions, to ask questions, and hopefully get some answers. This is what happens in a democracy even though it does make some people uncomfortable and some people find it inconvenient and some people find it annoying. That we are all here demonstrates that people do care about what happens in this community. Some people are motivated to take time out of their lives because they care deeply about this community and they want to see it prosper and they want to see it be a place where everyone wants to live. We don't really have too much to offer senior citizens here. We have the constant threat of floods, we have winter, and we have frac sand mining. I want to express my dismay that we are even here at this moment. How did it happen that we ended up in a situation like this? I am suggesting that our City government has failed in its most basic function which is leadership. I am disheartened that we are here to discuss how to mitigate the damage resulting from the frac sand mining. We should be discussing how Winona will compete with other cities and grow our economy so that we all prosper. We can do better than this.

Kim Sharpe, 252 Pleasant Hill Drive, stated that this is very good work from Carlos and it is a very good start but there is a lot more that needs to be done. It does not include anything about mining which is occurring in the City limits today and potentially could continue, this is strictly washing and processing. Looking at the specific conditions, it

does not talk about anything relative to road repair. There will be 8 mines in the County that will be almost 1,700 semis are travelling through the City. There is no language about covering the trucks and there is no language about measuring the dust, we have heard a lot of comments about the concerns around dust. There is nothing about scales for weighing the vehicles once they leave the washing and loading so we have any idea how much weight is being put on our roads. There is nothing about erosion mitigation relative to the washing in the CUPs. There is nothing about height on the stock piles and I think there is a lot of work that needs to be added to this, I think as we put conditions together for these CUPs going forward, we need to make sure they are thorough and I ask that you kick this back and let's finish doing our homework.

Les Miller, 2171 Goodview Road, explained that this processing plant is 200 feet from my bedroom. We have a dust problem that comes from this; the noise problem from this place goes over the road and into my house. I sleep during the day and work nights so it is hard to sleep during the day because of the banging of the trucks and their tailgates over there. At night, when they are running, there are front end loaders making all kinds of noise. I have a vibration in my house from this. These should not be located within a mile of residential places. We need to have more going for the City. We really need to get behind this.

Chairman Porter called three additional times for persons wishing to speak for or against the Conditional Use Permit before the Commission. Seeing and hearing no one else Chairman Porter closed the public hearing.

At this point, Chairman Porter called for Commission discussion.

Commissioner Eyden stated that we need to take care of all of the concerns we are hearing today before we go forward. She explained that frac sand processing needs to take place outside of the City. Commissioner Eyden stated that she was at the May 2011 meeting, when a site plan for Mr. Mikrut was approved. Mr. Mikrut assured us that all of the sand would be covered; it would be sopping wet or covered the whole time. It was not very long after that that I started seeing the railroad cars full of sand, delivering sand and then the piles started down along the river and none of that was covered. I am really disappointed in this whole thing, it came steam rolling through and I think that it does not belong in town. I understand that we are a port city and there may be some benefit to shipping it out under certain circumstances, but certainly processing does not belong in town.

Commissioner Eyden stated that she does have 12 additional conditions that would be placed on Conditional Use Permits if that is the direction that we have to go. She asked if she was to give these conditions. Chairman Porter stated to the Commission are we looking to go forward or are we looking to table the item. Commissioner Eyden suggested tabling the item because we have a lot more work to do to take care of our community.

Commissioner Buelow explained that he agrees with Commissioner Eyden. There are way too many gray areas and not enough regulation enforcement that gets checked out on these things. There needs to be more meat in this document and stricter ordinance and what regulations to oversee this stuff. It is going to be an ongoing monitoring of air quality and trucks. Who is going to do this? When? Where?

Someone in the audience asked if the Commissioners could state who they are when they are talking.

Commissioner Buelow commented on the conditions. Hours of Operation should be 8 a.m. to 8 p.m. Hard Surface – what happens to the sand that gets washed into the storm sewers from thunderstorms? Does that get cleaned out or what happened with the storm sewers? More detail specifics on watering the stock piles and covering the trucks and monitoring that this is being taken care of. Wash ponds-Are they going to be lined? We do not know what the chemicals are being used for washing. The mining going on in town is not addressed at all.

Commissioner Boettcher explained that when Mr. Mikrut's site plan was submitted and approved-it was approved as we saw fit at that particular time. It has exploded above and beyond what our thoughts would be at that particular time. Obviously businesses grow; obviously businesses wan, depending upon the business. However, we do have some concerns, not only the group you see here but also from our public. I think that it would be in our best interest to table this, to do some more input not only from business but also others and move forward as we see fit in the future. I look forward to having business, we need business, and otherwise people complain that there is not enough business, but yet we also need to look at the health and welfare of all concerned.

Chairman Porter stated that a lot of the regulations that we are talking about already have regulations in place covering them. It seems like the proposed additions under the Conditional Use Permit all identify items that are already addressed in the City Code, with regards to dust offending other businesses and causing a problem. I to, have a problem with item 10.

Commissioner Boettcher has addressed the sand situation with the City and it has been addressed. The City is trying to work with the providers down by the river, where ever this is occurring. Everything takes a little bit of time. That time could be 2 weeks, it could be a year, but give us time to look and observe and listen to your input. We have certain regulations that we have to work with also. Like in the beginning, if you wish, please show up at our meetings, that is one of your rights, like you did today, but many times people do not show up at our meetings and they are posted, not only on the website but also published in the paper.

Commissioner Ballard asked if it was possible to tour the sites?

Commissioner Porter reiterated that he would like to see us deal with the additional requirements part and maybe see if can come up with what those additional ones might be ahead of time and specify those. I am going to be looking at these Conditional Use Permit conditions to not be reiterations of existing City Code.

Given this, it was moved, and seconded, to table this item. Carlos Espinosa stated that we need to look at a specific date; the next meeting is on Monday, February 27th. Carlos Espinosa stated that he will put as much as possible together for the meeting on February 27th to discuss as a tabled item.

Chairman Porter asked all in favor of tabling this item until the meeting on Monday, February 27th. All Commissioners present voted aye, and the motion carried.

Public Hearing - Amendments to Sensitive Land Development/Other Code Sections

Chairman Porter introduced this item and called on Mark Moeller, City Planner, to review a summary of this item. Mr. Moeller noted that this particular issue had been kicked around by the Commission for over a year now. We are trying to substantially modify our current Sensitive Land Development Ordinance, which is part of our Subdivision Ordinance. Prior to considering these changes the Sensitive Land Development Ordinance was the primary environmental protection tool that we have for the City but the downside with it is that it only applies to lands that are being subdivided. The current ordinance what it does is to define the environments we are looking to protect and it also outlines the method of implementing that protection. The role of that ordinance is now changing to a more secondary function. Whereas the Sensitive Land Ordinance addresses lands that are being platted, the other ordinances, Bluff Protection, Shoreland, Stormwater Management, are all generic and are broader in scale and broader in scope. They apply to everything not just subdivisions. Defining environments within the Sensitive Land Ordinance will define the environments to be protected in these other ordinances that we've adopted. Simply bring that language into the Sensitive Land Development Ordinance. That ordinance will be the primary environmental protection document becomes more secondary to these other ordinances. We have some problems with consistency between the Bluff Protection and the Sensitive Land Development Ordinance. The Bluff Protection Ordinance is actually more restrictive than the Sensitive Land Development Ordinance.

Mr. Moeller explained that within the Sensitive Land Development Ordinance we would remove a couple of tables that are included in the ordinance. Table B generally provides a sliding scale that defines how much Natural State Area is to be included on an individual lot, that goes away. We will simply use the definition of a bluff in our Bluff Ordinance to define what would be protected. The Natural State Area concept will remain in the ordinance, what will change is how we protect these environment changes.

The ordinance involves basically altering our Sensitive Land Ordinance most of that will be deleted because it is simply not needed any more. We now have these other ordinances that drive most of the protection mechanisms that we need. We are proposing some changes to other sections of our Subdivision Ordinance and other provisions of our Zoning Ordinance and a couple of provisions within the Shoreland Ordinance.

Commissioner Buelow asked if the document has been shared with all the land owners that have bluff country in the sensitve shoreline areas. Mr. Moeller replied that there are a number of subdivision that we have approved over the years that have what we call Natural State Areas attached to them, and those are portions of the subdivision that are off limits to the development. If a subdivision has been approved, with those standards in place, this document does not change any of that, all that remains the same. What we are doing today actually simplifies everything a lot and even for someone looking to develop a piece of property. Commissioner Buelow asked if it would change it though. Mr. Moeller replied that he would share this with Commissioner Buelow and will get him a copy after the meeting today.

At this point, Chairman Porter opened the public hearing and called for any person who wished to speak to present first their name and address.

Stephen Doerr and his family have a farm that relates to both these bluffs and the shorelines, and would like to make certain that land owners have knowledge of those changes that are coming. My concern is that I have watched other meetings that the City Council has dealt with; there are all kinds of false testimony and also at the County level.

Joe Morse, 23375 Buffalo Ridge Rd., asked if areas that are Natural State Areas in the City of Winona will those continue to be Natural State. Mr. Moeller replied yes. Mr. Morse stated that it does not change anything from the past. Mr. Moeller replied that it will not and that we did include a new section in the amendment that states that if you have a subdivision or a lot that was previously approved and has an NSA attached to it- it does not affect you. You still have to live with the previous approval. Mr. Morse asked if there will be Natural State Areas in newly platted areas. Mr. Moeller replied yes. Mr. Morse commented that there are areas that are not marked Natural State but they are Natural State Areas on the plat map for the developments up on the hill that are routinely mowed and the grass cut and it is suppose to be Natural State, it is not suppose to be bothered, but it is. Maybe I should be telling someone about this and who do we call and who is monitoring this? These areas need to be marked. I urge you to actually mark those areas so that the people know where these Natural State Areas are.

Chairman Porter called three additional times for persons wishing to speak for or against the amendments to the Sensitive Land Ordinance. Seeing and hearing no one else, Chairman Porter closed the public hearing.

At this point, Chairman Porter called for Commission discussion.
Commissioner Olson made a motion to approve the changes that staff has made to the Sensitive Land Ordinance so that all the documents all say the same thing. Chairman Porter asked for a second. Commissioner Eyden mentioned that she would like to know what Joe Morse is talking about regarding the markers. Mr. Moeller replied that it is not in the amendments. The Commission did not come to a consensus on what they would look like and how they would be constructed and there were a lot of questions so we decided at that point to move ahead and come back to it. Do you have some direction for staff? Chairman Porter asked for a second to the motion and we could do an amendment to the motion. Commissioner Boettcher seconded the motion with amendments.

Chairman Porter asked for comments. We have two options, Commissioners can vote down the motion and ask staff to go back and include the language or if you're comfortable with it just tell staff what to put in there, make an amendment to the motion saying we want to approve it but with a marking requirement and be satisfied with whatever they put in to take to Council. Do you want to review what they come up with or just table the item. Commissioner Eyden stated that was quandary last time was that we didn't know what would be most practical, durable and affordable. Who would establish those markers? Commissioner Eyden and Boettcher suggested that we investigate what's in the best interest of the County and everyone concerned to abide by the law. Would the City provide or the developer?

Commissioner Olson asked if there is some wording in the ordinances that are addressing any future subdivision, the Natural State Areas, shall be marked by the developer. Mr. Moeller replied that it states right now upon preliminary plat approval no portion of the development may be disturbed until such time that Natural State Areas are clearly and field identified and protected pursuant to methods as outlined in the approved preliminary grading management plan. It shall be the responsibility of the developer and/or property owner to ensure that all Natural State Areas are clearly marked throughout all construction phases. So it is during the construction phase, that silt fences or whatever are used for marking. This language does not go beyond the construction phase. Mr. Moeller stated that there are a number of options that we can use. Commissioner Olson stated that they need to be marked during the construction phase because that is when dirt is being moved and things can possible get out of hand.

Chairman Porter reiterated that we need to make an amendment or say Mark include something that says how it is going to be identified or vote down the motion and ask staff to revamp it and come back with a marking. Mr. Moeller stated that he could come back with an amendment to the revisions that we are making now to and let that move forward.

Commissioner Ballard asked if the developer would provide those stakes when they stake out the lot when they are doing their platting. Mr. Moeller agreed. Mr. Moeller was unsure of when the final stakes are put in-sometimes they are not put in with the survey, they are put in after the construction is done. Commissioner Olson stated that the stakes are put in when the developer lays out the lot. When the developer has the surveyor out there marking out the individual lots it would be just as simple to locate the boundaries of the Natural State Area. They are doing it anyway for construction purposes. When construction is done, have the developer put a permanent metal stake with a small sign on it that says Natural State Area-Do Not Disturb.

Commissioner Ballard stated that that is a lot of added costs because you would have to have a surveyor to come back and basically resurvey all of the lots in the back so that they could establish where the Natural State Area is. Commissioner Olson stated that it would be a good time to put those permanent stakes in at the time that they lay out the original lot. Chairman Porter stated that they need to establish the NSA border, the developer needs to establish the NSA border prior to construction.

Chairman Porter asked how the Commission would like to proceed. Commissioner Olson stated that we should approve as is and address as an amendment. Commissioner Eyden stated that we could vote it down and make the modifications and bring it back to the next meeting. Mr. Moeller replied that he would not refer to Council until the amendment is made.

Commissioner Olson withdrew his motion.

Chairman Porter asked Mr. Moeller to bring the item back at the next meeting.

Other Business

Chairman Porter recognized the passing of our other Commissioner Arlene Prosen. He stated that she predates him on the Commission by 9 or 10 years. She was very dedicated. She was a Chairman and Vice Chair for a long time. She was a solid voice on the Commission.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned.

_____

Mark Moeller
City Planner

PLANNING COMMISSION

AGENDA ITEM: 3. Public Hearing – Amendment to City Code Chapter 43

PREPARED BY: Mark Moeller

DATE: February 27, 2012

In December of 2005, the City amended Chapter 43 to include Code provisions providing for the limitations of rental housing licenses within certain low to medium density residential zoning districts throughout the City. Specifically, these regulations are presently found at sections 43.58 (a) (1) and 43.58.2 (A) (6).

It is being proposed that these provisions now be transferred from the City Zoning Ordinance, to Chapter 33A, (City Rental Housing Code). Rationale for this recommendation follows:

1. The City has a specific rental housing ordinance that includes the regulations for licensure of rental properties in Chapter 33A of Winona City Code (Code). This chapter of Code contains all such requirements for rental housing licenses, except that the current location of the rental license limitation is in Chapter 43, zoning. In short, since Chapter 33A contains all of the requirements for rental housing licensure and the limitation on rental licenses pertains to the same, it is more appropriately located in Chapter 33A than in Chapter 43 so that all such license regulations are in one location in one chapter of Code.
2. The limitation on rental licensing is an exercise of the City's police power, thus through the licensing regulations, the City controls, among other things, the density of such licensed premises. This rental licensing regulation is enacted under the City's police power to protect the public health, safety and welfare of the community and is appropriately located in Chapter 33A, the City's rental licensing ordinance.

For Commission reference, a copy of a draft ordinance that would, once adopted, serve to implement the previous recommendation, is attached.

In conjunction with the City's consideration of this issue, a Memorandum was prepared by the consulting firm of Hoisington Koegler Group Inc. The purpose of this document was to examine the factual basis for the City's regulation of the concentration of rental property and generally consists of two sections. The first examining literature from around the country in which this issue was studied; and, the second examining the Winona data with respect to nuisance and police calls in relation to the concentration of rental property in single family areas. The conclusion of the Memorandum is that there is a factually supported correlation between the concentration of rental properties, particularly rentals of single family dwellings, and increase in behaviors that lead to a decline in neighborhood livability. This supports the implementation of regulations

aimed at controlling the concentration of rental housing in traditional single family neighborhoods.

Staff recommends approval of the attached ordinance. Following its review of the full record of this matter, should the Commission concur with this recommendation, a motion to that effect should be adopted, and referred to Council for an additional hearing, and final action.

Attachments

AN ORDINANCE TO AMEND
THE CODE OF THE CITY OF
WINONA, MINNESOTA
1979

The City of Winona does ordain:

Section 1. That Section 33A.03 of the City Code of Winona, Minnesota, 1979, which section is entitled "Rental Housing License" be amended as follows:

33A.03 - RENTAL HOUSING LICENSE

(a) Application. The owner or manager of a structure, in which one or more dwelling units or rooming units are let or intended to be let, shall make application for a rental housing license prior to letting the unit, unless such unit is currently certified. An owner or manager of such structure shall not allow occupancy of such unit until the certification-inspection fee has been paid and a rental housing license has been issued. The building official or housing inspector may issue a temporary rental housing license not exceeding 3 months in duration in order to bring the unit into compliance with this chapter.

(b) Issuance. The building official or housing inspector shall issue a rental housing license for each dwelling, dwelling unit or rooming unit, when upon inspection finds such unit meets or exceeds the minimum requirements set forth by this chapter; also a rental housing license shall be issued for each dwelling, dwelling unit or rooming unit, when a variance has been granted by the Board of Adjustment; provided, however, it is found that no condition exists, in a shared or public area of the building or in any other part of the unit, which could endanger the health or safety of the occupants of such unit or of the public. Such license shall show the number of occupants for which the dwelling, dwelling unit or rooming unit is approved for and once issued shall remain valid until it expires or such time as the building official or housing inspector determines that the dwelling, dwelling unit or rooming unit does not meet the minimum requirements set by this chapter.

(c) Renewals. A rental housing license shall expire five (5) years after the date of issuance. Re-inspection of all dwellings, dwelling units or rooming units shall be required prior to issuance of a new certificate.

(d) Revocation. A Rental Housing License may be suspended or revoked as prescribed in section 51.02 of this Code.

(e) Fees. A Rental Housing License-inspection fee as set forth in section 51.01 of the Winona City Code shall be paid prior to issuance of a rental housing license.

(f) Inspection. The building official or housing inspector shall inspect a unit upon receiving a legitimate complaint from a complainant willing to leave their name and address; anonymous complaints shall not be handled. Complainant's name shall be kept confidential pursuant to the Minnesota Data Privacy Act. Upon inspection and finding a violation the inspector shall notify the owner, manager or tenant in writing to correct the violation. The owner or manager may request an advisory inspection of a unit.

(g) Prohibited Acts. Whoever does any of the following shall be guilty of a misdemeanor.

(i) No License. Allows occupancy of a dwelling unit or rooming unit prior to the issuance of a rental housing license and payment of the license inspection fee.

(ii) Over Occupancy. Permits a dwelling unit or rooming unit to be occupied by more persons than the dwelling unit or rooming unit is certified for.

(iii) Occupying Vacated Unit. Occupies or allows occupancy of a unit that was posted and ordered vacated.

(iv) Occupying Uncertified Bedrooms. Occupies or allows occupancy of a room as a bedroom that is not certified as a bedroom and does not qualify as a bedroom.

(h) Limitation of rental housing in low density neighborhoods. In R-R, R-S, R-1, R-1.5 and R-2 districts of the city, no more than 30 percent (rounded up) of the lots on any block shall be eligible to obtain certification as a rental property, including homes in which roomers and/or boarders are taken in by a resident family. A block is defined is as a group of properties bounded entirely by streets, public land, railroad rights of way, zoning district lines, corporate limit lines, or physical features such as rivers, outcroppings, ponds or lakes; provided that final delineation of a block shall be made by City staff. When determining the number of eligible properties on a block, the number shall be the lowest number that results in 30 percent or more of the residential lots being rental. The following table indicates how many lots are able to be certified as rentals based on the number of lots that exist on a block.

Lots	Rental	Lots	Rental	Lots	Rental	Lots	Rental	Lots	Rental
1-3	1	21-23	7	41-43	13	61-63	19	81-83	25
4-6	2	24-26	8	44-46	14	64-66	20	84-86	26
7-10	3	27-30	9	47-50	15	67-70	21	87-90	27
11-13	4	31-33	10	51-53	16	71-73	22	91-93	28
14-16	5	34-36	11	54-56	17	74-76	23	94-96	29
17-20	6	37-40	12	57-60	18	77-80	24	97-100	30

In cases in which one portion of the block is in an affected zone and another is in an exempt zone, only the affected portion is subject to this regulation.

(i) Exceptions. This limitation shall not apply to state licensed residential facilities nor to rental properties which are validly licensed as of the date of adoption of this ordinance. The latter will

be counted among the 30 percent of allowable rental houses for purposes of determining whether new licenses may be issued.

(ii) Exempt Districts. Property located within the following zoning districts are exempt from this rule: A-G, R-MHP, C-1, R-3, B-1, B-2, B-2.5, B-3, M-1, and M-2.

(iii) Temporary Rental License. Notwithstanding the foregoing, a property owner, whose property is subject to the 30 percent limitation, may obtain a temporary rental license for his or her property for a period of time not exceeding 12 consecutive months from the effective date of this ordinance under the following conditions:

1. The property is actively being offered for sale to the public by the owner, or by any authorized agent of the owner, during the licensing period.

2. The property shall be temporarily licensed for rental purposes only if the property complies with all applicable City and State rental housing requirements.

3. The property shall be licensed only for one of the following: (a) one adult living alone; or (b) two unrelated adults living together with any dependents by birth, adoption or law; or (c) any number of persons related by blood, marriage, adoption, or law.

4. The temporary rental housing license shall terminate immediately upon the closing of a sale of the property to a purchaser or at the expiration of 12 months from April 20, 2011, whichever event first occurs. Notwithstanding the foregoing, bona fide leases entered into during the 12 month effective period of this ordinance shall terminate at the end of the stated lease term or one year from the date of the lease agreement, whichever event first occurs.

5. A copy of the lease agreement shall be deposited with the City's Community Development Department within one week from the date of the execution of the lease.

Section 2. That paragraph A of Section 43.58.2 of said Code, which section sets forth permitted uses in a Rural Residential (R-R) District, be amended as follows:

A. Permitted Uses. The following uses shall be permitted in the R-R District:

1. One family dwellings.

2. Religious and educational facilities provided that such uses are located not less than 40 feet from any lot line;

3. National, state, county and municipal parks/playgrounds;

4. Emergency service, municipal, county, state and federal administrative buildings provided that they shall be located a minimum of 60 feet from any lot line; but not including warehouses, storage yards and similar facilities;

5. Agricultural uses, commercial nurseries and greenhouses, but not including kennels; provided, that any lot or tract in such use shall not be less than 3 acres in area that no more than 1 animal unit per acre shall be permitted, and that any building in which animals are kept shall be located the following distances from any residential district:

1-5 Animal Units – 50 feet
6-10 Animal Units – 100 feet
More than 10 Animal Units – 200 feet.

6. Rental units, provided that no more than 30 percent (rounded up) of the residentially-zoned lots on any block shall be eligible to obtain certification as a rental property, including homes in which roomers and/or boarders are taken in by a resident family. For the purposes of this rule, state-licensed residential facilities are not considered rental properties. When determining the number of eligible properties on a block, the number shall be the lowest number that results in 30 percent or more of the residential lots being rental. The following table indicates how many lots are able to be certified as rentals based on the number of lots that exist on a block.

Lots	Rental	Lots	Rental	Lots	Rental	Lots	Rental	Lots	Rental
1-3	1	21-23	7	41-43	13	61-63	19	81-83	25
4-6	2	24-26	8	44-46	14	64-66	20	84-86	26
7-10	3	27-30	9	47-50	15	67-70	21	87-90	27
11-13	4	31-33	10	51-53	16	71-73	22	91-93	28
14-16	5	34-36	11	54-56	17	74-76	23	94-96	29
17-20	6	37-40	12	57-60	18	77-80	24	97-100	30

In cases in which one portion of the block is in an affected zone and another is in an exempt zone, only the affected portion is subject to this regulation.

Notwithstanding the foregoing, a property owner, who is subject to the terms of this provision, may obtain a temporary rental license for his or her property for a period of time not exceeding 12 consecutive months from the effective date of this ordinance under the following conditions:

1. The property is actively being offered for sale to the public by the owner, or by any authorized agent of the owner, during the licensing period.

2. The property shall be temporarily licensed for rental purposes only if the property complies with all applicable City and State rental housing requirements.

3. The property shall be licensed only for one of the following: (a) one adult living alone; or (b) two unrelated adults living together with any dependents by birth, adoption or law; or (c) any number of persons related by blood, marriage, adoption, or law.

4. The temporary rental housing license shall terminate immediately upon the closing of a sale of the property to a purchaser or at the expiration of 12 months from the effective date of this ordinance, whichever event first occurs. Notwithstanding the foregoing, bona fide leases entered into during the 12 month effective period of this ordinance shall terminate at the end of the stated lease term or one year from the date of the lease agreement, whichever event first occurs.

5. A copy of the lease agreement shall be deposited with the City's Community Development Department within one week from the date of the execution of the lease.

Section 3. That paragraph (a)(1) of Section 43.58 of said Code, which section sets forth the general permitted uses in an R-3 Multi-Family Residence District, be amended as follows:

(a) Permitted Uses. The following uses shall be permitted in the R-3 district:

(1) Generally. All principal uses permitted and as regulated in the R-2 district, except as hereinafter specified. However, there is no limit on the proportion of certified rental properties that can be located on a block zoned R-3. In cases in which a block contains R-3 zoned properties and properties of another residential zone, those properties zoned R-3 shall have no limit on rental certification, while those in other residential zones shall be subject to the 30 percent rule.

Section 4. That this ordinance shall take effect upon its publication.

Dated this _____ day of _____, 2012.

_____
Mayor

Attested By:

_____
City Clerk

MEMORANDUM

To: Winona City Council, Planning Commission and City Staff
From: Mark Koegler and Jeff Miller (HKGi)
Date: February 21, 2012
Re: Winona Rental Housing Restriction Ordinance – Literature Review & Data Analysis Findings

Hoisington Koegler Group Inc. (HKGi) has conducted a literature review relating to rental housing concentration and its negative impacts on neighborhood quality and livability. This literature review included rental housing's relationship with increased nuisance complaints, increased police incidents, decreased property maintenance levels, decreased homeownership levels, and decreased property values. Although there is a substantial amount of literature that addresses rental housing issues, much of the literature does not contain empirical analysis. Through our literature review, we were able to identify empirical studies of five cities that have faced rental housing issues that are relevant to Winona. Based upon our findings from the literature review, HKGi then compiled and analyzed detailed data related to Winona's rental housing concentration levels and its relationship to nuisance and police violations. Based on our findings from the literature review and city-level empirical studies that nuisance and police violations are key indicators of neighborhood quality and livability, we focused our data analysis on the relationships between concentrated rental housing and nuisance/police violations in Winona. This memo summarizes our literature review and data analysis findings.

I. Literature Reviewed

1. Craig Raborn, "Coping With Colleges: How Communities Address the Problems of Students Living Off-Campus," *Zoning News* (May 2002).
2. Duncan Associates, "Analysis of Issues Regarding Student Housing Near the University of Florida," April 2002.
3. Jack S. Frierson ,"How Are Local Governments Responding to Student Rental Problems in University Towns in the United States, Canada, and England?" *Georgia Journal of International and Comparative Law* (Winter 2005).
4. John Janmaat, "The Curse of Student Housing: Evidence from Wolfville, Nova Scotia," 2010.
5. Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, "The Impact of Rental Properties on the Value of Single-Family Residences," Journal of Urban Economics, 1991.
6. Mayor's Commission on Housing & Home Ownership, "Promotion of Home Ownership in the City of Binghamton: A Report of the Mayor's Commission on Housing and Home Ownership," 2008.
7. Ngai Pindell, "Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability," *Scholarly Works* (Paper 57), 2009.
8. Terance J. Rephann, "Rental Housing and Crime: The Role of Property Ownership and Management," The Annals of Regional Science (43), 2009.
9. Sage Policy Group, "There is a Rational Basis for Rent Stabilization in College Park, Maryland," April 2005.

10. Sage Policy Group, "There Remains a Rational Basis for Rent Stabilization in College Park, Maryland," August 2009.
11. State College Borough Staff, "Sustainable Neighborhoods in State College Borough," June 8, 2009.
12. West Urbana Neighborhood Association, "What Other College Communities Have Done: Examples of Regulatory Actions to Preserve the Single-Family Residential Character of a Campus Neighborhood," January 2005.
13. William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996.
14. Farley v. Zoning Hearing Board of Lower Merion Township, 1994.
15. Lantos v. Zoning Hearing Board of Haverford Township, 1993.

II. Issues with Concentration/ Density of Rental Housing in Single-Family Neighborhoods

Regulating the concentration or density of rental housing in single-family residential neighborhoods is a particular issue that the City of Winona is addressing with its 30% limit of rental housing properties per block. Specifically, the City's low and medium density residential zoning districts allow rental units as a permitted use but limit the number of residentially-zoned lots on any block that can obtain rental housing certification to a maximum of 30%. According to City Planning Commission Meeting Minutes, the Parking Task Force concluded that housing density, property maintenance, off-street parking and deteriorating residential community character were major problems "resulting from the extensive number of homes which have been converted to rental purposes"[1] in some areas of the community. Based on this finding, the task force proposed to establish a limitation on the number of rental houses that could be concentrated within each block within all residential zoning districts, with the exception of the R-3 zoning district.

The literature review supports the City's concerns with an over-concentration of rental houses in single-family residential neighborhoods. Many university towns face the problem of large numbers of single-family houses being converted to rental houses in single-family residential neighborhoods, thereby, creating a high concentration of student rental houses within single-family residential neighborhoods. The literature reviewed supports the argument that over-concentrations of rental houses have negative impacts on surrounding residential properties and neighborhoods in general, including noise, increased traffic, litter, illegal parking, inadequate property maintenance, and a general decrease in the quality of life for permanent residents of the neighborhood.[2] The impacts typically fall into three primary categories:

- increased nuisance and property maintenance complaints,
- increased City Code violations and police citations,
- decreased property values.

Thus, the impacts are physical, economic and social, ultimately contributing to decreases in the quality and livability of neighborhoods.

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[1] City of Winona Planning Commission Meeting Minutes, October 24, 2005: 5.

[2] Jack S. Frierson, "How Are Local Governments Responding to Student Rental Problems in University Towns in the United States, Canada, and England?" *Georgia Journal of International and Comparative Law* (Winter 2005): 1.

In general, the studies found that rental residential properties, particularly, rental single-family houses, are generally maintained at a lower level than owner-occupied houses. Property maintenance issues often include building repairs, yard care, and snow removal. The "Homeownership and Neighborhood Stability" article cites several studies that show "that homeowners are more likely than landlords to undertake repairs and that they spend more on them."[3] This same article also asserts that owner-occupied housing units are generally maintained at a higher level because homeowners, unlike landlords and renters, possess both an economic and use interest in their homes. "The Impact of Rental Properties on the Value of Single-Family Residences" article cites several studies that have empirically demonstrated this situation. Inadequate property maintenance issues often result in increased levels of nuisance complaints and City Code violations, as well as decreases in property values of nearby housing.

Several studies (Wang, et al; Rohe & Stewart, Janmaat, Pindell) contain empirical analyses that linked higher concentrations of rental houses to decreases in nearby property values. The most direct study of those reviewed relating to impacts on property values was "The Impact of Rental Properties on the Value of Single-Family Residences" study, which concluded that "an inverse relationship exists between the value of a house and the presence of rental properties in the study area."[4] This study analyzed data from 23,119 single-family residences and 1,162 single-family sales in San Antonio (TX). Another study found that "after controlling for housing stock characteristics, household characteristics, and MSA-level economic factors, a 5-percentage-point change [increase] in the homeownership rate of a tract would be associated with about a $4,000 increase in mean single-family property value over a 10-year period of time."[5] A subsequent impact of decreased property values is the decrease in property tax revenues for the City, County and other taxing jurisdictions.

Several studies (Sage Policy Group, Rephann, Duncan Associates, State College Borough) contain empirical analyses that link the concentration of rental houses to increases in nuisance complaints, City Code violations, and crime incidents. Nuisances typically include yard care (e.g. weed control, grass cutting), snow removal, refuse, illegal parking, noise, disorderly conduct, liquor and over-occupancy. Section III of this memo describes the empirical analyses linking the concentration of rental houses with nuisance complaints and City Code violations in five cities. Nuisance complaints, code violations and crime incidents are key indicators of a neighborhood's livability and residents' satisfaction with their neighborhood. The literature reviewed indicates increased incidences of nuisances, code violations and crimes in renter-occupied houses versus owner-occupied houses. A subsequent impact of increased complaints, violations and crime incidents is the additional costs incurred by a city to observe, address and process them.

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[3] William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996: 48.

[4] Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, "The Impact of Rental Properties on the Value of Single-Family Residences," *Journal of Urban Economics*, Volume 30, Issue 2 (1991): 164.

[5] William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996: 71-72.

III. Empirical Studies of Rental Housing Impacts on Community Livability in Five Cities

Through the literature review, we were able to identify empirical studies in five cities that show a correlation between the concentration of rental housing and negative impacts on community livability. The five cities are Gainesville (FL), State College (PA), College Park (MD), Cumberland (MD), and Chapel Hill (NC). Specifically, these five empirical studies identify a link between the concentration of rental housing and increases in nuisance complaints, code violations and police incidents.

Gainesville, FL

In 2002, the City of Gainesville conducted an analysis of student housing issues in the neighborhoods around the University of Florida, which were identified as the study's University of Florida (UF) Context Area. The City's Comprehensive Plan specifically contains a policy calling for such a study in its Future Land Use chapter. Policy 5.1.7 states that "The City shall prepare a study of the impacts of rentals on single-family neighborhoods and shall implement additional programs as necessary and appropriate to stabilize and enhance these neighborhoods."[6] Based on Census data for the Census tracts that make up the UF Context Area, the study estimated that approximately 75% of the residences in this area are used as rental housing. Using code and noise complaint data from the City's Code Enforcement Division, the study tabulated and compared the number of complaints from the UF Context Area with the overall city. Although the UF Context Area represents 23% of the households in the city, the study found that approximately 51% of the noise complaints came from this area, 46% of the over-occupancy complaints, 50% of the "vision triangle" (obstructed views at intersection corners) complaints, 43% of the sign violations, and 37% of the minor housing code violations.[7]

State College, PA

In 1994 and 2007, the Borough of State College compiled "Violations by Housing Type" reports. The housing types include apartments, duplexes, fraternities, single-family houses, rental houses, rooming houses and townhouses. This analysis showed that rental single-family houses had the highest average number of nuisance violations per unit, followed by duplexes and fraternities.[8] The top four violations for rental single-family houses were snow, refuse, weeds and noise. The record does not show any evidence that the maximum of three unrelated persons rule, which was enacted in 1979, reduced the number of conversions of owner-occupied single-family houses to student rental houses. In 1997, State College Borough established a minimum spacing ordinance between student rental houses. The record suggests that the minimum distance between student rental single-family homes has resulted in a decrease in conversion of owner-occupied homes to rental homes.[9]

College Park, MD

In 2005, the City of College Park conducted a rental housing study that looked at declining homeownership, an increasing trend in conversions of owner-occupied single-family housing being to rental housing, and the

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[6] Duncan Associates, "Analysis of Issues Regarding Student Housing Near the University of Florida," April 2002: 1.
[7] Ibid: 24.
[8] Staff of State College Borough, "Sustainable Neighborhoods in State College Borough," June 8, 2009: 7.
[9] Ibid:8-9.

concentration of City Code violations occurring in rental single-family housing. In 2004, the study calculated that the average number of first notice code violations per residential rental unit was 0.78 compared to 0.21 first notice code violations for owner-occupied residential units, which equates to 3.7 times more violations for rental housing[10]. In 2008, there were 0.92 violations per rental housing unit compared to 0.38 for owner-occupied housing unit.[11] This study found an increasing trend in conversions of owner-occupied single-family homes to rental housing and a corresponding higher rate of City Code violations in rental single-family housing. In addition to the negative impact on neighborhood quality and livability, this significant higher level of nuisance violations also results in additional costs for the City to process code violations, including observation, recording, communicating and rectifying them.

Cumberland, MD

This paper analyzes the links between residential rental properties and crime incidents in the City of Cumberland, MD, which has a population of approximately 21,000 residents. Using police incident report data for privately owned rental properties, the type (disturbances, assaults and drug activity) and frequency of crime incidents were analyzed. The study selected these crimes because "they are frequently found in a residential setting and are considered important measures or indicators of neighborhood quality of life."[12] This study found that increases in crime were linked to residential rental properties, in particular rental properties where the landlord does not live on-site, properties that are part of larger rental property holdings, properties that use Section 8 vouchers, and properties in neighborhoods with a lower percentage of owner-occupied houses.

Chapel Hill, NC

Chapel Hill's 2000 Comprehensive Plan "is organized around twelve major themes, each growing out of the community values that have been identified and which, taken together, form a strategy for Chapel Hill's future."[13] One of these major themes is to conserve and protect existing neighborhoods. The Comprehensive Plan contains an entire chapter devoted to community character, including goals, strategies and actions to conserve and protect the character of the community's neighborhoods. "The central purpose of the strategies and actions contained in the Comprehensive Plan is to manage growth and change so that Chapel Hill will continue to have a special community character and quality of life in the future."[14]

One of these strategies is to address the neighborhood impacts of the conversion of owner-occupied housing to rental housing, including nuisance complaints. The City has identified community indicators that are monitored annually as a means for tracking progress of the implementation of its Comprehensive Plan strategies. For the rental housing strategy, the corresponding community indicator is the percentage of loud noise complaints that occur in neighborhoods that touch and circle the downtown and central campus, which have been designated Residential Conservation Areas in the City's Land Use Plan. In 2004, 33% of loud noise complaints occurred in these neighborhoods, which have concentrations of residential

[10] Sage Policy Group, "There is a Rational Basis for Rent Stabilization in College Park, Maryland," April 2005: 17.
[11] Sage Policy Group, "There Remains a Rational Basis for Rent Stabilization in College Park, Maryland," April 2009: 11.
[12] Terance J. Rephann, "Rental Housing and Crime: The Role of Property Ownership and Management," The Annals of Regional Science (43), 2009: 2.
[13] Town of Chapel Hill (NC), "Planning for Chapel Hill's Future: The Comprehensive Plan," May 8, 2000: i.
[14] Ibid: 11.

rental housing.[15] Since these neighborhoods represent approximately 20% of the total housing units within Chapel Hill, they are responsible for a disproportionate share of the loud noise complaints in the community. The City of Chapel Hill clearly links and monitors rental housing nuisance incidents with neighborhood character and quality of life.

IV. Minnesota Examples of Cities with Rental Housing Concentration Regulations

At the state level, in addition to Winona's rental housing concentration ordinance, we are aware of three other Minnesota cities that have established ordinances to address the issue of concentrated rental housing – Northfield, Mankato and West St. Paul. While Winona's ordinance established a maximum of 30% rental housing properties per residential block, the other cities' maximums are all lower including 25%, 20% and 10%. These three ordinances were all established after Winona's ordinance was in place – Northfield (2007), Mankato (2008) and West St. Paul (2012).

- Northfield, MN: Located in Businesses Ordinance (not Zoning Ordinance), Rental Housing (Chapter 14, Article III). Limits the percentage of houses on a single block that can be granted rental housing licenses to 20% in low density neighborhoods (R-1 and R-2 zoning districts).
- Mankato, MN: Located in Business Regulations & Licensing Ordinance (not Zoning Ordinance), Dwelling Unit Rental (Section 5.42, Subdivision20). Limits the number of lots on any block that are eligible to obtain a rental license or to be licensed as a rental property to 25%.
- West St. Paul, MN: Located in Building, Housing & Construction Regulations Ordinance (not Zoning Ordinance), Rental Dwellings (Section 435). Limits single-family rental properties to 10% per block in an R1 zoning district.

[15] Town of Chapel Hill (NC), "2004 Chapel Hill Data Book," July 2004: S-8.

V. Analysis of Winona Nuisance and Police Violations Data

In order to compare Winona's rental housing situation with the findings from other cities' empirical studies related to rental housing concentration issues, which are described in Section III, an analysis was conducted of Winona's nuisance and police violations data. Since the City's "30% Rule" zoning ordinance was adopted at the end of 2005, this data analysis covers the time period of 2006-2011 for nuisance complaints. Police citation data was analyzed for the 2009-2010 time period. The intent of this analysis is to calculate and compare violations data for rental housing vs. owner-occupied housing within non-multifamily residential areas, as well as concentrated rental residential blocks (blocks currently over the 30% maximum) vs. all other residential blocks.

This analysis of nuisance and police violations was limited to properties within the City's residential zoning districts, except for R-3, since the "30% Rule" is only applicable to these zoning districts. Properties in the following zoning districts are exempt from the "30% Rule": B-1, B-2, B-3, R-3, M-1, and M-2. Within the applicable residential zoning districts, there are currently 7,383 properties. Some of these residential properties have not been developed with a residential building yet, therefore, the more relevant total residential properties number that we used is 6,557 developed residential properties, not including R-3 properties. In 2011, 1,161 properties had rental housing certification, which means rental housing certified properties represented 17.7% of the non-multifamily residential properties within Winona.

In 2011, there were a significant number of blocks that exceeded the maximum level of 30% rental housing. These blocks contain 1,528 residential properties, including both rental and owner-occupied housing, and represent 23.3% of the non-multifamily residential properties within Winona. 676 of the 1,528 properties on the "over 30%" blocks had rental housing certification, which translates to an average of 44.2% rental housing properties on the "over 30%" blocks. Although many blocks exceed the maximum level of 30% rental housing, many blocks do not. Within the city's area of traditional square blocks, approximately 700 additional rental housing certifications are permitted on blocks that currently have less than 30% rental housing. Within the entire city, approximately 1,400 additional rental housing certifications could be permitted. In other words, less than half of the possible rental housing certifications are currently being used since 1,171 rental housing certifications currently exist compared to the possibility of an additional 1,400 that could be permitted.

The first type of analysis looks at nuisance complaints for the time period of 2006-2011 for all properties within residential zoning districts, except R-3. The types of nuisance complaints included the following: uncontrolled weeds, grass/lawn maintenance, garbage, junk, vehicles, vehicles parked in yard, furniture in yard, snow/ice, no building permit, building deterioration, fence deterioration, and other. Table 1 below summarizes total number of residential property complaints, number & percentage of rental property complaints, and number & percentage of non-rental property complaints. The major finding is that rental housing properties, which represent just 17.7% of all non-multifamily residential properties within Winona, were responsible for 51% of the residential nuisance complaints from 2006-2011.

Table 1: Nuisance Complaints – Rental Residential Properties vs. Non-Rental Properties (2006-2011)

Year	*Total Number of Residential Property Complaints*	*Number of Rental Property Complaints*	*% Associated w/ Rental Properties*	*Number of Non-Rental Property Complaints*	*% Associated w/ Non-Rental Properties*
2011	345	133	39%	212	61%
2010	414	194	47%	220	53%
2009	492	249	51%	243	49%
2008	413	232	56%	181	44%
2007	416	255	61%	161	39%
2006	236	108	46%	128	54%
2006-2011	2,316	1,171	51%	1,145	49%

Note: Rental housing properties represent 17.7% of all non-multifamily residential properties in Winona, not including residential properties in the following exempted zoning districts – B-1, B-2, B-3, R-3, M-1 and M-2.

The second type of analysis looks at nuisance complaints for the time period of 2006-2011 comparing blocks with over 30% rental housing to blocks with less than 30% rental housing. Table 2 below summarizes total number of residential property complaints, number & percentage of complaints associated with blocks having over 30% rental housing, and number & percentage of complaints associated with blocks having less than 30% rental housing. The major finding is that blocks with over 30% rental housing, which represent just 23.3% of all non-multifamily residential properties within Winona, were responsible for 47% of the residential nuisance complaints from 2006-2011.

Table 2: Nuisance Complaints – Concentrated Rental Blocks vs. Other Residential Blocks (2006-2011)

Year	*Total Number of Residential Property Complaints*	*Number of Complaints in Blocks OVER 30% Rental Housing*	*% Associated w/ Blocks OVER 30% Rental Housing*	*Number of Complaints in Blocks LESS THAN 30% Rental Housing*	*% Associated w/ Blocks LESS THAN 30% Rental Housing*
2011	345	131	38%	214	62%
2010	414	187	45%	227	55%
2009	492	233	47%	259	53%
2008	413	203	49%	210	51%
2007	416	228	55%	188	45%
2006	236	102	43%	134	57%
2006-2011	2,316	1,084	47%	1,232	53%

Note: Blocks with over 30% rental housing represent 23.3% of all non-multifamily residential properties in Winona, not including residential properties in the following exempted zoning districts – B-1, B-2, B-3, R-3, M-1 and M-2.

The third type of analysis delves deeper into nuisance complaints for the time period of 2006-2011 to compare rental/non-rental properties on "over 30% rental blocks" with rental/non-rental properties on "less than 30% rental blocks". Table 3 below summarizes this data. The analysis in the upper half of Table 3 shows that rental housing properties on concentrated rental blocks had an average number of nuisance complaints per property of 1.16 vs. 0.80 for rental housing properties on non-concentrated rental blocks. This difference translates to a 45% higher rate of nuisance complaints for rental housing properties that are located on concentrated rental blocks. Another way to look at it is that rental housing properties located on concentrated rental blocks, which represent 10% of all residential properties, are responsible for 34% of residential nuisance complaints. Furthermore, the analysis in the lower half of Table 3 shows that non-rental housing properties on concentrated rental blocks had an average number of nuisance complaints per property of 0.35 vs. 0.19 for non-rental housing properties on non-concentrated rental blocks. Thus, the concentration of rental housing creates a spillover effect on non-rental housing to increase its rate of average nuisance complaints per property more than 80%.

Table 3: Nuisance Complaints – Rental/Non-Rental Properties & Concentrated Rental Blocks (2006-2011)

Type of Properties	*Total Number of Properties*	*Number of Nuisance Complaints 2006-2011*	*Average Number of Nuisance Complaints per Property*	*% of Total Residential Properties*	*% of Nuisance Complaints*
Rental Housing Properties on Over 30% Rental Blocks	676	783	1.16	10%	34%
Rental Housing Properties on Less Than 30% Rental Blocks	485	388	0.80	8%	17%
Non-Rental Housing Properties on Over 30% Rental Blocks	852	301	0.35	13%	13%
Non-Rental Housing Properties on Less Than 30% Rental Blocks	4,544	844	0.19	69%	36%
Total	6,557	2,316	0.35	100%	100%

The fourth type of analysis looks at police citations for the 2009-2010 time period. The types of police citations analyzed included primarily loud party, minor consumption, social host ordinance, public urination, criminal damage to property, and theft/burglary. Table 4 below compares the number of police citations associated with rental/non-rental properties on "over 30% rental blocks" with rental/non-rental properties on "less than 30% rental blocks". The analysis in the upper half of Table 4 shows that rental housing properties on concentrated rental blocks had an average number of police citations per property of 0.0533 vs. 0.0206 for rental housing properties on non-concentrated rental blocks. This difference translates to a 160% higher rate of police citations for rental housing properties that are located on concentrated rental blocks. Another way to look at it is that rental housing properties located on

concentrated rental blocks, which represent 10% of all residential properties, are responsible for 55% of residential nuisance complaints.

Table 4: Police Citations – Comparison of Rental Properties & Blocks (2009-2010)

Type of Properties	*Total Number of Properties*	*Number of Police Citations 2009-2010*	*Average Number of Police Citations per Property*	*% of Total Residential Properties*	*% of Police Citations*
Rental Properties on Over 30% Rental Blocks	676	36	0.0533	10%	55%
Rental Properties on Less Than 30% Rental Blocks	485	10	0.0206	8%	15%
Non-Rental Properties on Over 30% Rental Blocks	*852*	*3*	*0.0035*	*13%*	*4%*
Non-Rental Properties on Less Than 30% Rental Blocks	4,544	17	0.0037	69%	26%
Total	6,557	66	.0100	100%	100%

Note: The police citations data for 2009-2010 above does not include nine (9) of the citations because no address was indicated on these citations for the actual location of the crime incident.

VI. Conclusion

Our literature review of rental housing concentration and its effects, including the empirical studies of five cities, supports the conclusion that the concentration of rental housing results in negative impacts to the quality and livability of residential neighborhoods. In addition, our compilation and analysis of the relationship between Winona's rental housing concentration and nuisance complaints/police violations data parallels the findings of the literature review. In particular, we find that concentrated rental housing in Winona has resulted in a much higher rate of nuisance complaints and police violations in concentrated rental housing blocks, impacting both rental and non-rental residential properties. Thus, based upon the literature review, including the empirical studies of five cities relevant to Winona's rental housing issues, and the detailed analysis of Winona data, we conclude that the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods. As these violations are indicators of increased nuisances and decreased property maintenance levels that negatively affect neighborhood quality and livability, we also conclude that the concentration of rental housing leads to decreased neighborhood quality and livability.

PLANNING COMMISSION

AGENDA ITEM: 4. Sand Processing & Transportation Facilities CUP Amendment

PREPARED BY: Carlos Espinosa

DATE: February 27, 2012

Summary

At the last Planning Commission meeting, there were numerous questions and requests related to the CUP proposal for sand processing and transportation facilities. This agenda item is intended to answer those questions, and provide an updated CUP ordinance proposal for review. This agenda item refers to the "original" and "revised" CUP proposals. The original proposal was presented at the last Planning Commission meeting. The revised proposal includes the following:

1. An additional requirement clarifying adherence to state regulations for dust generation.
2. An additional requirement for a fugitive dust control plan.
3. An additional requirement clarifying that a CUP applicant must "obtain" and provide all applicable state permits to the City.
4. An additional CUP provision requiring truck washing equipment and/or tracking pads to reduce the potential for sand and debris to be tracked onto city roads.
5. A requirement for full cut-off style lighting or shielding to help prevent glare and light pollution.

When reviewing the revised CUP proposal, it's important to keep in mind the different regulatory roles of the state and City governments related to sand processing and transportation project review. Basically, the state sets regulations for air, water, and environmental review while cities typically set regulations for zoning, nuisances, and site plan review. Thus, in terms of air, water, and environmental review, the expertise and regulatory framework for such topics lies mainly with state agencies such as the MPCA and DNR. Staff's intent with the proposed amendments is to utilize existing state regulations where appropriate so that oversight is not duplicated at the local level.

A summary of the state environmental regulations that typically apply to sand mining and processing operations is included in Attachment B: *Environmental Management at Aggregate Operations.* In addition to this summary, the MPCA has recently created a new page on their website with information on state regulations related to frac sand mining.[1]

[1] http://www.pca.state.mn.us/index.php/air/air-quality-and-pollutants/air-pollutants/frac-sand-mining.html

Questions and Answers

What about dust/air quality?

Regulations

As presented in staff's report to Council, the best approach to addressing dust/air quality may be to ensure compliance with existing state regulations as summarized in Attachment B. This is because processing in Winona takes place while the sand is wet, and any fully dry sand is required to be covered per industry requirements (thus greatly reducing potential dust/Particulate Matter risks to the public).

The state (Minnesota Pollution Control Agency) typically requires permits for facilities that have the potential for releasing particulates from stacks/equipment in excess of 25 tons per year (see Attachment C). This would include any sand drying operations that are proposed (e.g. Mikrut's proposal at 25 McConnon Drive). If a permit is issued, the dust requirements generally apply to other activities as well (See Attachment D pg. 3). Air permits are not typically required for sand washing, transportation, and storage of sand. However, under Minnesota Rule 7011.0150:

> No person shall cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired, or demolished without applying all such reasonable measures as may be required to prevent particulate matter from becoming airborne. All persons shall take reasonable precautions to prevent the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate. The Commissioner may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne including, but not limited to, paving or frequent clearing of roads, driveways, and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.

Also, Minnesota Rule 7009.0020 states that:

> No person shall emit any pollutant in such an amount or in such a manner as to cause or contribute to a violation of any ambient air quality standard beyond such person's property line, provided however, that in the event the general public has access to the person's property or portion thereof, the ambient air quality standards shall apply in those locations. The general public shall not include employees, trespassers, or other categories of people who have been directly authorized by the property owner to enter or remain on the property for a limited period of time and for a specific purpose.

These rules apply to all facilities, all businesses, and all people throughout the state – including existing operations (see Attachment E). In accordance, the original CUP proposal added the following sentence to the general performance standards for air pollution:

> *"All activities shall comply with applicable state law, rules and local ordinances for Particulate Matter generation, and any stockpiles (including sand and dirt) which produce windblown dust shall be covered."*

The revised CUP proposal adds "*dust*" to the sentence above and stipulates that "*A fugitive dust control plan may be required detailing dust control measures both on-site and off-site*." Also, the revised CUP proposal adds to the specific conditions that "*Any applicable state or federal permits shall be obtained."* As a result, the City will require applicants for a sand processing or transportation CUP to demonstrate compliance with particulate matter and dust rules (i.e. show how dust will be controlled on-site and not escape onto adjacent property) through a fugitive dust control plan, and provide the City with any air permits required by the state. If the Board of Adjustment is not satisfied with the response, they may request that the applicant hire a specialist to provide additional detail about dust mitigation and compliance with existing state regulations.

Regulating the potential for dust generation through a site by site CUP process is optimal because unique on-site and off-site characteristics of each operation can be considered. This allows a dust suppression plan to be "customized" for each application and entered into public record.

<u>Monitoring</u>

Monitoring for general violations of visible dust is completed by staff. Basically, if an operation is producing visible dust that settles onto adjacent properties, staff contacts the violator and works to eliminate the issue. For example, staff is currently working with the 370 West Second Street sand operation to reduce the dust and debris that is being tracked onto Second Street.

Monitoring for sites that have air permits is completed by the MPCA. The monitoring entails monthly reports submitted by the operator to the MPCA. Noncompliance with permit requirements may result in enforcement action from the MPCA.

Regular monitoring of existing facilities without air permits (e.g. sand processing and transportation) does not occur. However, if a facility is violating the state rules discussed above, a complaint may be filed with the MPCA. When a complaint is filed, the MPCA contacts the operator to inquire about the operation and what dust control measures are being employed. Next, depending on the characteristics of the operation, additional enforcement steps are taken as appropriate.

Air monitoring for proposed sites without air permits may be required as part of the Conditional Use Permit process. As such, Particulate Matter monitoring would be

conducted by the operator per MPCA standards. The results would be sent to the city and submitted to the MPCA for review. A violation of the state limits may result in enforcement action by the MPCA.

What about noise?

Regulations

The original CUP proposal added "missing" zoning districts to the noise ordinance. This means noise from sand operations would be regulated just like every other land use or industry in Winona. Accordingly, more noise may be made in industrial and agricultural districts, but as soon as a boundary is crossed into a residential zoning district, the permitted noise level drops – especially after 10 p.m.

As proposed in the original CUP proposal, adding "noise" to the CUP review process will require the applicant to demonstrate how they will comply with these standards depending on the unique situation of each proposal.

Monitoring

City staff monitors for noise violations in accordance with MPCA protocol. If an operation is exceeding the requirements for a zoning district, staff will contact the violator and work to reduce the noise that is being created. One important consideration is that the measurements for noise have difficulty picking up brief intermittent noises such as back up alarms on industrial equipment. That is why staff proposes specifically addressing back up alarms in proposed limits on hours of operation.

What about water quality?

Regulations

Water quality concerns center on groundwater, surfacewater, and water runoff. When it comes to water used in the processing of frac sand, the MPCA has stated, "Based on our current understanding of frac sand mining operations, we do not anticipate specific or unique environmental or health risks that are not already addressed though the current water permitting processes." This means that permits may be required for construction storm water, industrial stormwater and other water discharges, and/or water withdrawals (see Attachment B).

As stated previously, the revised CUP proposal adds to the specific conditions that "*Any applicable state or federal permits shall be obtained."* As a result, applicants for a CUP would have to demonstrate how they will comply with water permitting requirements.

Monitoring

Upon receipt of an application, the City will communicate with the MPCA to ensure the agency is aware of the pending project and all applicable permits are obtained.

What about frac sand mining?

The proposed CUP does not address mining in Winona because there is already a CUP review requirement for these uses. Questions about the operation of the existing Biesanz Quarry are beyond the scope of this agenda item and should be addressed separately.

Can the definition of expansion include increases in capacity/intensity?

The definition of expansion may address intensity increases. However, the issue with determining intensity increases is enforcement and monitoring. For example, how is an "increase" measured – daily, monthly, yearly? And does a taller pile of sand necessarily mean that intensity has increased? To the extent that expansion of nonconformities is an issue, it would be more straightforward for staff to monitor and enforce the three expansion criteria stated at the previous meeting: 1) Addition of new equipment, 2) Increase in land area of use, and 3) Expansion onto a new site. In this manner, intensity increases could be addressed through the addition of new equipment provision. If an existing nonconforming use adds new equipment that increases its capacity to move sand - that would qualify as an expansion and require the operation to apply for a CUP.

Can the Board of Adjustment be allowed 3-6 months to respond to CUP requests?

The Board cannot automatically be permitted to spend 3-6 months responding to CUP requests because of the "60 day rule" in Minnesota. In accordance with the rule, a City may extend the review period to 120 days upon good reason and documented notice to the applicant. After 120 days the applicant must agree to a continued extension.

Can the hours of operation be more stringent than 7 a.m. to 10 p.m.?

The hours of operation may be more stringent. The hours in the original CUP proposal are based on decibel thresholds for residential areas in the noise ordinance. However, if the Commission would like to recommend more stringent hours, it should consider applying the stricter hours only to truck traffic and machinery with backup alarms (thus addressing off-site impacts and common noises that don't register in noise measurements). This would allow sand operations, like other industries in Winona, to operate during nighttime hours as long as noise thresholds are maintained.

What would be required for screening?

Screening may consist of landscaping (e.g. berms, trees) and solid board fencing as needed to mitigate visual impacts of operations on adjacent properties. What will be required is highly dependent on the site and situation of each sand operation. Thus it is hard to stipulate exact requirements that would apply to all projects.

What would be required for lighting?

Lighting is typically addressed through the site plan review process. According to city ordinance, lighting in M-2 zoning district may not produce glare (shine directly) on adjacent residentially zoned properties. Requiring full cut-off style lighting/fixtures where possible would help reduce the potential for glare on adjacent properties. This is a lighting characteristic that would be beneficial to all projects in the city. Thus the following is proposed to be added to the site plan ordinance:

(7) General Site Lighting. Lights should be directed towards structures or areas to be illuminated. Site lighting shall employ full cut-off style lights, lighting shields or fixtures as appropriate to keep glare on-site and minimize glare onto adjacent properties. The design and placement of lighting fixtures shall not have an adverse effect upon abutting properties.

Are the proposed CUP conditions part of existing City Code?

The proposed CUP conditions for sand operations are not part of the existing city code. Staff may address the conditions through the site plan process before a project begins or retroactively if there is a violation of the City ordinance. Requiring the proposed CUP conditions as part of the review process by the Board of Adjustment means the applicant will have to address the regulations up front, and the regulations are part of a permit to operate. Violation of the conditions is grounds for revocation of the CUP. Without the CUP, a facility may not operate – this gives the City significantly more leverage in enforcing compliance.

How is a conditional use permit enforced?

Compliance with a Conditional Use Permit is monitored and enforced by city staff. Violation of the conditions will cause staff to contact the operator and work to ensure compliance. If there is not substantial compliance with conditions, a CUP may be revoked so long as the revocation is based on factual evidence and proceeded by appropriate notice and hearing.

What about chemicals in settling ponds?

If a project proposes to use chemicals (e.g. flocculants) in settling ponds, they must be approved by the MPCA. Current sand washing operations in the Winona area do not

use flocculants. Staff will work with future project applicants to ensure they obtain the correct water permits as discussed previously.

What about environmental review?

Environmental review through an EAW (Environmental Assessment Worksheet) or EIS (Environmental Impact Statement) is not required for sand washing or transportation facilities. Environmental review can only be ordered for new projects (ones that aren't already in operation) or for projects that propose an expansion. An EAW may be prepared at the discretion of the City if it is determined that a project will have significant environmental effects. An EAW for a specific project may also be initiated through citizen petition. The petition must provide the following:

- A description of the proposed project.
- Identification of the project proposer. (*Note: petitioners must also notify the proposer in writing that they have filed a petition with the EQB*)
- Identification of a representative for petitioners, including mailing address and telephone number.
- A brief description of the project's potential environmental effects, including an explanation of how unusual or unique characteristics of the project or its location create a need for an EAW even though no mandatory threshold is exceeded.
- Material evidence of potential for significant environmental effects because of the project's nature or location.
- Signatures of at least 25 individuals, with no restriction on location of residence, age or any other factor. *Signers must provide a complete mailing address.*

The petition must then be filed with the Environmental Quality Board and it is up to the City of Winona to determine the need for an EAW. If environment review were required for new sand processing and transportation facilities, it would occur in addition to the CUP review process.

What about watering frequency for stockpiles?

It would be difficult to stipulate a watering frequency for stockpiles because of changes in weather and season and the differences among operations (e.g. sites with "raw" sand stockpiles versus sites with wet washed sand stockpiles). Simply requiring that stockpiles must be watered regularly to prevent wind erosion makes it very easy for staff to enforce this provision – if dust or sand can be seen blowing off the stockpiles – the operation is in violation of the condition.

What about the bridge? Will it deteriorate in two years?

The Winona County Engineer's recent report analyzed impacts to a low-traffic, rural county road built for 110,529 ESALs (Equivalent Single Axel Loads) and an ADT (Average Daily Traffic) count of 500. Winona's interstate bridge is designed according to different parameters (structural capacity versus road wear). Therefore, the County

Engineer's report cannot be used to estimate the life span of the bridge. The appropriate agency for questions related to the interstate bridge is Mn/DOT. The agency is fully aware of the increased truck traffic over the bridge.

What about the potential for "additional requirements?" What would the additional requirements be?

The additional requirements section would allow the Board of Adjustment to impose additional conditions related to the City's health, safety, and welfare. Additional conditions must be reasonable, related to the impacts of the proposed use, and be roughly proportional to the impacts of the proposed use. Although this provision may raise questions, additional requirements may be part of <u>any</u> Conditional Use Permit. According to the League of Minnesota Cities:

> Reasonable conditions relating to the ordinance standards may be attached to a CUP based upon factual evidence contained in public record. For example, if a zoning ordinance provides that a conditional use should not have adverse visual or noise impacts on any adjacent property, a city might require specific screening and landscaping conditions to address any potential impacts established in the record.

Thus, additional conditions may include requirements for traffic impact analysis, additional air monitoring, additional noise restrictions, etc. Basically, this provision serves as a catchall which allows the City to appropriately address the unique characteristics of a proposed project.

<u>Updated Ordinance Description</u>

As a result of the previous meeting, the following highlighted changes/updates are proposed for the draft ordinance.

General Conditions

The proposed amendments require the following uses to obtain a CUP in an M-2 zoning district:

39) Sand processing facilities, including sand washing and drying facilities.
40) Transportation facilities used to ship sand, except for dredged material (e.g. river sand) from the Mississippi River.

These uses would be reviewed in accordance with the following performance standards listed in City Code Section 43.33 (see Attachment F):

1) Fire and explosion hazard
2) Radioactivity or electric disturbance

3) Noise *(In accordance with and measured at locations stated in Chapter 39 (see Attachment E)*
4) Vibration
5) Smoke
6) Odors
7) Fly Ash, dust, fumes, vapors, gases, and other forms of air pollution
8) Glare
9) Liquid or solid waste
10) *Additional requirements – The City of Winona reserves the right to impose additional conditions to, within and upon issuance of a Conditional Use Permit as it deems necessary or appropriate to protect the health, safety, morals, and general welfare of the public.*

The amendments add number 10) above to the performance standards – it does not currently exist. Also, the proposed amendments add the following sentence to existing wording in number 7) above: *All activities shall comply with applicable state law, rules and local ordinances for dust and Particulate Matter generation, and any stockpiles (including sand and dirt) which produce windblown dust shall be covered. A fugitive dust control plan may be required detailing dust control measures both on-site and off-site.* Finally, the proposed amendments also add noise (number three) to the general performance standard review.

The procedure for review of these performance standards is detailed in City Code Section 43.30 (Attachment G). Basically, the applicant for a CUP must demonstrate to the Board how the project as proposed will comply with each applicable performance standard. As mentioned previously, the Board may request that a specialist be hired (at the cost of the applicant) to provide additional information.

Specific CUP Conditions

In addition to compliance with the general conditions, sand processing and transportation facilities would be required to comply with the following specific conditions. Staff has highlighted proposed additions to the original CUP proposal below. If an applicant cannot fully comply with a condition, a variance may be requested:

1) *Hard Surfacing – Asphalt or concrete surfacing shall be required in any truck or equipment maneuvering area.*

   This condition is included because the amount of on-site truck traffic has the potential to create dust that travels to adjacent properties. This issue has been observed at some existing frac sand operations.

2) *Truck Washing Equipment and/or Tracking Pads* – Truck washing equipment or tracking pads, or a combination of both, shall be required at each facility.

The condition is added to help reduce the amount of sand and debris that is tracked out of sand operation by trucks.

3) *Truck Route Designation – All trucks entering and leaving such facilities shall enter and exit Winona on designated truck routes. Such routes shall avoid residentially zoned property to the greatest extent possible.*

   This condition is included so that trucks avoid residential areas and for the City of Winona to have designated routes on record.

4) *Stockpile Covering – Stockpiles undisturbed for more than one week shall be covered.*

   This condition is included to help prevent the potential for windblown dust from undisturbed stockpiles.

5) *Stockpile Watering – Uncovered stockpiles shall be watered regularly to prevent surface areas from drying out and becoming susceptible to wind erosion.*

   This condition is included to help prevent the potential for windblown dust from uncovered stockpiles and the potential for particulate matter generation (see report to Council for a discussion on particulate matter).

6) *Hours of Operation – Hours of operation shall be limited to 7 a.m. – 10 p.m.*

   This condition is included to limit the impact of sand operations on residential areas. The hours are based on decibel limits for "day" and "night" in residential zones according to the noise ordinance (see below). Staff's intent with this condition is to eliminate the potential for noise issues from truck traffic and vehicles/machinery (especially those with back-up alarms) after 10 p.m. As such, the Commission should discuss allowing equipment (e.g. dryers, screeners, etc.) and machinery without back up alarms to operate after 10 p.m. provided noise ordinance requirements are met.

7) *Landscaping and Screening – Sufficient landscaping and screening, including but not limited to fences, walls and/or vegetative screens, as approved by the City of Winona, shall be provided to mitigate visual impacts of operations on adjacent properties.*

   This condition is included to help improve the aesthetics of projects as appropriate.

8) *Contact Information – Facility operators shall provide current contact information to the City of Winona to facilitate prompt response to concerns.*

9) *Permits and Reports Obtained and Placed on File – Any applicable state or federal permits shall be obtained and placed on file at the City of Winona. Any reports generated to fulfill permit requirements shall be submitted to the City of Winona.*

Conditions 8) and 9) are included to facilitate prompt response to complaints or concerns and ensure required state permits are obtained.

Noise Pollution Ordinance (Chapter 39):

Additional zones - The A-G, RMHP, R-S, R-R, and R-1.5 zoning districts shall be added to the noise ordinance.

These zones have been unintentionally left out of the noise ordinance. The proposed amendments add these zones as follows:

	Day (7 a.m. - 10 p.m.)		Night (10 p.m. - 7 a.m.)	
Zoning District	L_{50}	L_{10}	L_{50}	L_{10}
RMHP, R-S, R-R, R-1.5	60	65	50	55
R-1, R-2, R-3, C-1	60	65	50	55
B-1, B-2, B-3	65	70	65	70
B-2.5, M-1, M-2, A-G	75	80	75	80

Site Plan Ordinance (Section 44.06 c):

(7) General Site Lighting. Lights should be directed towards structures or areas to be illuminated. Site lighting shall employ full cut-off style lights, lighting shields or fixtures as appropriate to keep glare on-site and minimize glare onto adjacent properties. The design and placement of lighting fixtures shall not have an adverse effect upon abutting properties.

Next Steps

Staff requests the Planning Commission review the proposed amendments and the additions to them. At the end of discussion, a formal recommendation may be made. Staff will bring such recommendation to the City Council as part of a public hearing.

Attachments:

A) Draft Ordinance
B) MPCA: Environmental Management at Aggregate Operations
C) MPCA: Facts About Air Quality Permit Rules
D) MPCA: Facts About Odors, Noise, and Dust for Local Governments
E) MPCA: Facts about General Air Quality Rules
F) Performance Standards
G) Performance Standards Review Procedure

AN ORDINANCE
TO AMEND THE CITY CODE
OF THE CITY OF WINONA, MINNESOTA
1979

The City of Winona does ordain:

Section 1. That Section 39.03 of the City Code of Winona, Minnesota, 1979, which section is entitled "Source Requirements" and pertains to Noise Pollution, be amended as follows:

"39.03 SOURCE REQUIREMENTS. (a) The source sound level requirements of this section shall apply at the property or zoning lines of the sound receiving unit. Measurements may be made at any location in zoning districts for evaluation purposes and to aid in the enforcement of other sections of this chapter.

(b) The source sound levels as stated below in subsection (c) shall be the highest source levels permitted in each zoning district.

(c) Source requirements: Ord. No. 3788 4/6/09

	Day (7 a.m. - 10 p.m.)		Night (10 p.m. - 7 a.m.)	
Zoning District	L_{50}	L_{10}	L_{50}	L_{10}
RMHP, R-S, R-R, R-1.5	60	65	50	55
R-1, R-2, R-3, C-1	60	65	50	55
B-1, B-2, B-3	65	70	65	70
B-2.5, M-1, M-2, A-G	75	80	75	80

(d) Sound levels resulting from travel of motor vehicles on state and county highways are exempt from these noise source requirements but not other sections of this chapter relating to motor vehicles operated in other areas. It is the intent of the city to reduce highway noise in the various land areas surrounding highways to or below the source requirements of this section when and wherever possible.

(e) All sound levels originating in any development or property which contains one or more buildings and which is without property lines for each building shall not exceed the source requirements for the applicable zoning district measured at the area of human activity, or if this is ill-defined, at any point on a line, all of whose points are equidistant from any two buildings."

Section 2. That paragraph (e) of Section 43.33 of said Code, which section sets forth Performance Standards for land and building use in the City, be amended as follows:

"(e) Performance Standards, Regulations. The following provisions, standards and specifications shall apply:

(1) Fire and explosion hazard. All activities involving and all storage of inflammable and explosive materials shall be provided at any point with adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire suppression equipment and devices standards in the industry. Burning of waste materials in open fire shall be prohibited at any point. The relevant provisions of state and local laws and regulations shall also apply.

(2) Radioactivity or electric disturbance. No activities shall be permitted which emit dangerous radioactivity at any point or electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of such disturbance.

(3) Noise. In accordance with and measured at locations stated in Chapter 39.

(4) Vibration. No vibration shall be permitted which is discernible without instruments at the points of measurement specified in subsection (d) above.

(5) Smoke. No emission shall be permitted at any point, from any chimney or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 of the Power's Micro-Ringlemann Chart, published by McGraw-Hill Publishing Company, Inc., and copyright 1954 (being a direct facsimile reduction of the standard Ringlemann Chart as issued by the United States Bureau of Mines), except that visible gray smoke of a shade equal to No. 2 on said Chart may be emitted for 4 minutes in any 30 minutes. These provisions applicable to visible gray smoke shall also apply to visible smoke of different color but with an apparently equivalent capacity.

(6) Odors. No emission shall be permitted of odorous gases or

other odorous matter in such quantities as to be offensive at the points of measurement specified in subsection (d) above. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail. There is hereby established as a guide in determining such quantities of offensive odors Table III, "Odor Thresholds," in Chapter 5 "Air Pollution Abatement Manual," copyright 1951 by Manufacturing Chemists' Assn., Inc., Washington, D.C.

(7) Fly ash, dust, fumes, vapors, gases, and other forms of air pollution. No emission shall be permitted which can cause any damage to health, to animals, vegetation or other forms of property, or which can cause any excessive soiling, at any point; and in no event any emission, from any chimney or otherwise, of any solid or liquid particles in concentrations exceeding 3/10 grains per cubic foot of the conveying gas at any point. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of 500 degrees Fahrenheit and 50 percent excess air. <u>All activities shall comply with applicable state law, rules and local ordinances for dust and Particulate Matter generation, and any stockpiles (including sand and dirt) which produce windblown dust shall be covered. A fugitive dust control plan may be required detailing dust control measures both on-site and off-site.</u>

(8) Glare. No direct or sky-reflected glare, whether from floodlights or from high-temperature processes, such as combustion, welding or otherwise, so as to be visible at the points of measurement specified in subsection (d) above. This restriction shall not apply to signs otherwise permitted by the provisions of this chapter.

(9) Liquid or solid wastes. No discharge at any point into any public sewer, private sewage disposal system or stream or into the ground, except in accord with standards approved by the department of health of the state or standards equivalent to those approved by such department for similar uses of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements.

(10) Additional Requirements. The City of Winona reserves the right to impose additional conditions to, within and upon the issuance of a Conditional Use Permit as it deems necessary or appropriate to protect the health, safety, morals and general welfare of the public."

Section 3. That paragraph (b) of Section 43.63 of said Code, which paragraph sets forth Conditional Uses in an M-2 Zoning District, be amended as follows:

"43.63 (b) Conditional Uses. The following manufacturing uses shall be permitted in the M-2 district only if specifically authorized by the board in accordance with the provisions of Section 43.30; provided, that such uses can control the generation of any dangerous or offensive elements in their operation, so as to comply with the performance standards in Section 43.33 and subject to review in accordance with the performance standards procedure in Section 43.30 in all instances.

(1) Acetylene manufacturing in excess of 15 pounds pressure per square inch.
(2) Acid manufacture, except as provided in this section.
(3) Asbestos manufacture.
(4) Automobile assembly.
(5) Bleaching, cleaning and dyeing plant.
(6) Boiler shops, structural steel fabricating shops, railway car or locomotive shops, including repair metal working shops employing reciprocating hammers or presses over 20 tons rated capacity.
(7) Distilling of liquors.
(8) Brick, pottery, tile and terra cotta manufacturing.
(9) Bulk station.
(10) Candle or sperm oil manufacturing.
(11) Cooperage works.
(12) Dextrine, starch or glucose manufacturing.
(13) Disinfectant, insecticide or poison manufacturing.
(14) Enameling, lacquering or Japanizing, varnishing.
(15) Emery cloth or sandpaper manufacturing.
(16) Felt manufacturing.
(17) Flour or grain mill.
(18) Forge or foundry works.
(19) Grain drying or poultry feed manufacturing, from refuse, mash or grain.
(20) Hair or hair products manufacturing.
(21) Lime or lime products manufacturing.
(22) Linoleum, oil cloth or oiled goods manufacturing.
(23) Match manufacturing.
(24) Meat packing, stockyards or slaughterhouses must comply with the requirements of distance from other districts, as set out in this section.

(25) Paper and pulp manufacturing.
(26) Perfume manufacturing.
(27) Pickle, sauerkraut or sausage manufacturing.
(28) Plaster manufacturing.
(29) Poultry slaughterhouse, including packing and storage for wholesale.
(30) Printing ink manufacturing.
(31) Radium extraction.
(32) Sandblasting or cutting.
(33) Sawmill, the manufacture of excelsior, wood fiber sawdust products.
(34) Sewage disposal plant.
(35) Shoddy manufacturing.
(36) Shoe blacking or polish or stove polish manufacturing.
(37) Steam power plant, except where accessory to a permitted principal use.
(38) Slag piles.
(39) Sand processing facilities, including sand washing and drying facilities. In addition to the general performance standards set forth in Section 43.33, sand processing facilities shall also comply with the following specific conditions:

a. Hard Surfacing. Asphalt or concrete surfacing shall be required in any truck or equipment maneuvering area.
b. Truck Washing Equipment and/or Tracking Pads. Truck washing equipment or tracking pads, or a combination of both, shall be required at each facility.
c. Truck Route Designation. All trucks entering and leaving such facilities shall enter and exit Winona on designated truck routes. Such routes shall avoid residentially zoned property to the greatest extent possible.
d. Stockpile Covering. Stockpiles undisturbed for more than one week shall be covered.
e. Stockpile Watering. Uncovered stockpiles shall be watered regularly to prevent surface areas from drying out and becoming susceptible to wind erosion.
f. Hours of Operation. Hours of operation shall be limited to 7 a.m. – 10 p.m.
g. Landscaping and Screening. Sufficient landscaping and screening, including but not limited to fences, walls and/or vegetative screens, as approved by the City of Winona, shall be provided to mitigate visual impacts of operation on adjacent properties.
h. Contact Information. Facility operators shall provide current contact information to the City of Winona to facilitate response to concerns.
i. Permits and Reports Obtained and Placed on File. Any applicable state or federal permits shall be obtained and placed on file with the City of Winona. Any reports generated to fulfill permit requirements shall be submitted to the City of Winona.

(40) Transportation facilities used to ship sand, except for dredged material (e.g. river sand) from the Mississippi River. In addition to the general performance standards set forth in Section 43.33, transportation facilities used to ship sand shall also comply with the specific conditions set forth under 43.63 (b) (39) above.

The provisions of this section shall also apply to any other use which, in the opinion of the zoning inspector or board, is of a similar character with respect to the emission of dangerous or offensive elements to the uses listed above."

Section 4. That paragraph (c) of Section 44.06 of said Code, which section sets forth Principles of Design for Site Plans, be amended by adding thereto the following:

"(7) General Site Lighting. Lights should be directed towards the structures or areas to be illuminated. Site lighting shall employ full cut-off style lights, lighting shields or fixtures as appropriate to keep glare on-site and minimize glare onto adjacent properties. The design and placement of lighting fixtures shall not have an adverse effect upon abutting properties."

Section 5. That this ordinance shall take effect upon its publication.

Dated this _____ day of _____, 2012.

_____
Mayor

Attested By:

_____
City Clerk

Minnesota Pollution Control Agency

Environmental Management at Aggregate Operations

Waste water permits #3.01, 9/04

- Aggregate production is an important Minnesota industry, producing sand, gravel and crushed stone for construction projects and other uses throughout the state.
- The Minnesota aggregate industry recognizes the economic and public relations benefits of progressive environmental management.

This fact sheet summarizes pollution prevention opportunities and Minnesota Pollution Control Agency (MPCA) permitting requirements for aggregate operations. Some general information about permit programs administered by other agencies is also provided.

Environmental Review

If a new pit or quarry is started, or an existing one is expanded by 40 acres or more, and the pit will have a mean depth of at least 10 feet during its existence, the project needs to have an Environmental Assessment Worksheet prepared. If the new pit or expansion will cover at least 160 acres, mined to a mean depth of 10 feet or more, an Environmental Impact Statement is needed. For more information on this process, contact the Environmental Quality Board at (651) 296-8253, or visit their Web site at: http://www.eqb.state.mn.us/review.html

Construction Storm Water

Construction storm water runoff at a new pit or quarry may require a construction storm water permit for the initial construction phases of operation. Construction activities, such as building roads, berms, containment devices, and grading at a new pit or quarry that involves one or more acres, may trigger the requirement to obtain a construction storm water permit, and to stabilize these initial disruptions before terminating the permit.

For more information on Construction Storm Water requirements and the publications available to help you comply, contact the MPCA Customer Assistance Center (CAC) or Small Business Assistance Program (SBAP), or visit our Web site at: http://www.pca.state.mn.us/water/stormwater/stormwater-c.html

Industrial Storm Water and other Water Discharges

The aggregate industry deals with water throughout the construction season. To excavate gravel or rock, the water table may need to be lowered. Washing of sand, gravel or crushed stone may be needed to ensure it meets product specifications.

The following activities at aggregate operations require a water quality permit from the MPCA:

- Sand and gravel washing discharges that leave the mine or quarry pit, whether by gravity flow or pumping.

  Often, operators can recycle their wash water and/or allow it to infiltrate the pit floor, and avoid the need for wash water overflows and other discharges. This may change their requirement to have a permit.

- Pumping or siphoning out a mine or quarry pit to create a dewatering discharge.

  Good sump management to prevent accumulation of dirty water is important, particularly in quarry pits. Sometimes pit water can be reused in the plant, or for road dust control.

- The generation of wastewater by air emission control systems, particularly from the wet scrubbers used at some hot mix asphalt plants.

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Minnesota Pollution Control Agency, 520 Lafayette Rd. N., St. Paul, MN 55155-4194
(651) 296-6300, toll-free (800) 657-3864, TTY (651) 282-5332 or (800) 657-3864
This material can be made available in alternative formats for people with disabilities.

- The discharge of any other water from the site.

- Storm water runoff from mine and quarry stockpiles and pit walls, as well as from equipment like rock crushers, hot mix asphalt, and concrete production plants.

  A site with runoff needs to have a Pollution Prevention Plan implemented for the operations at that particular site. Good management practices such as vegetative buffers, detention ponds, covered bulk containers and hazardous material storage areas, as well as the skillful placement of stockpiles and equipment, can greatly improve storm water management and erosion control at aggregate sites.

To apply for Water Quality permit coverage for aggregate operations, use the "Water Quality Transmittal Form" and "Attachment for Construction Sand & Gravel, Rock Quarrying and Hot Mix Asphalt Production Facilities" attachment form. For more information on Water Quality permits and requirements, contact the CAC or SBAP, or visit our Web site at: http://www.pca.state.mn.us/water/permits/sandgravel.html.

Fuel and Hazardous Materials Management

When equipment is refueled, maintained or repaired outside the shops, special care must be taken to prevent spills, and to quickly contain and collect accidental spills. The employees at each site should be trained under a spill control plan. Used oil, lubricants, antifreeze, paint, solvents, vehicle cleaning wastes, recovered freon, asbestos, PCBs and shop wastes should be properly contained, stored, and recycled or disposed of in compliance with MPCA requirements.

For more information on Hazardous Waste requirements and the publications available to help you comply, contact the CAC or SBAP, or visit our Web site at: http://www.pca.state.mn.us/waste/pubs/business.html

Liquid (including fuel) storage tanks, whether aboveground or underground, need to have effective containment and may need to be approved by the MPCA.

For more information on tanks requirements and the publications available to help you comply, contact the CAC or SBAP, or visit our Web site at: http://www.pca.state.mn.us/cleanup/tanks.html

Air Quality Management

All facilities must meet minimum standards for dust and noise control. Facilities with crushing operations may have to meet additional federal standards for emissions of particulates from processing equipment. It is important to control dust throughout the facility, including at crushers, screens, conveyors and hoppers. Due to potential air quality problems, materials containing asbestos (which is generally found in old buildings, and has been used in older roads and concrete materials) must not be crushed.

The use of fuels, other volatile chemicals, and/or generators may also dictate additional air quality requirements. Depending on production capacity and processing equipment, an Air Emission Permit may be required.

For more information on Air Quality requirements and the publications available to help you comply, contact the CAC or SBAP, or visit our Web site at: http://www.pca.state.mn.us/air/pubs/index.html

Solid Waste Management

Some aggregate operations store used asphalt and/or concrete, captured particulate emissions, or other demolition debris. The MPCA encourages recycling of these materials, and of scrap and trash materials, when possible. If this is not practical, used pavement must be disposed of in an approved sanitary or demolition debris landfill.

For more information on Solid Waste requirements and the publications available to help you comply, visit our Web site at: http://www.pca.state.mn.us/waste/pubs/solidwaste.html, or call the MPCA at (651) 297-6300 or (800) 657-3864 to be connected to solid waste staff for your regional area.

Water Withdrawals

Surface or ground water withdrawals (such as for dewatering, washing, makeup water for scrubbers, roadbed preparation, dust control, irrigation) of more than ten thousand gallons/day or one million gallons/year require a DNR water appropriation permit. Re-use of dewatering and wash water is encouraged and may help eliminate the

need for a permit or reduce DNR water use fees. A DNR water appropriation permit is not required if the water is taken from a municipal or other source of water for which there is a valid appropriation permit.

For more information on water use permits, contact the Department of Natural Resources at (651) 297-2835, or visit their web site at: http://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/index.html

Riprap and Discharge Outlets

Riprap installation for outflows to public waters does not require a DNR permit if installed according to the following requirements:

a. The riprap consists of natural rock only.
b. The riprap is sized according to the guidelines in practice 6.18 of the MPCA publication "Protecting water quality in urban areas". This publication is available on-line at: http://www.pca.state.mn.us/water/pubs/sw-bmpmanual.html
c. The riprap conforms to the natural alignment of the shore or stream bank.
d. No excavation occurs below the top of the stream bank or the ordinary high water level of a basin or wetland.
e. The materials are placed less than 5 feet water ward of the ordinary high water mark.
f. The minimum finished slope is no steeper than 3 feet horizontal to 1 foot vertical (3:1).
g. No bank shaping or back sloping is required to achieve the 3:1 slope.
h. The materials do not obstruct receiving water flow.
i. The discharge is not directly to Lake Superior, DNR-designated trout waters, or a posted fish spawning area.

Trout waters are designated in Minn. R. 6264.0050, subp. 2 and 4; this list may be obtained from the DNR by calling (651) 296-3325. DNR Trout waters are also available on-line in the 'Special Waters Search' at http://www.pca.state.mn.us/water/stormwater/stormwater-c.html Information on DNR protected waters permits is available from the DNR at (651) 296-4800.

US Army Corps of Engineers

Activities that involve the discharge of dredged or fill material or excavation within waters and wetlands may require approval of the Corps of Engineers. Such activities could include the construction of access roads or the creation of storage areas and building sites.

Also, activities related to the construction of pit dewatering outfall structures and the excavation of water detention/retention ponds within waters and wetlands may require Corps approval.

For more information on Corps of Engineers requirements, contact the St. Paul District Office at (651) 290-5375, or visit their web site at: http://www.mvp.usace.army.mil/environment/

Additional Information

If you have questions or would like more information, contact:

Environmental Quality Board
Environmental Review Process ..... (651) 296-8253

Minnesota Pollution Control Agency
Customer Assistance Center (CAC) ..... (651) 297-2274 or
..... (800) 646-6247

Small Business Assistance Program (SBAP)* (651) 282-6143 or
(800) 657-3938

- Construction Storm Water
- Industrial Storm Water
- Waste Water Permitting
- Storage Tanks
- Hazardous Waste Management
- Air Quality

Solid Waste Questions or Issues ..... (651) 296-6300 or
..... (800) 657-3864

*Note that businesses with fewer than 100 employees company-wide can call our Small Business Assistance Program for free, nonregulatory, confidential environmental assistance.

Minnesota Department of Natural Resources
Water Use Permits..... (651) 297-2835
Protected Waters Permits ..... (651) 296-4800
Trout Waters Information..... (651) 296-3325

US Army Corps of Engineers
Dredge, fill or excavation to waters/wetlands . (651) 290-5375

Facts About Air Quality Permit Rules

Air Quality #4.03 • July 2010

The permit rules in Minn. R. ch. 7007 affect a large number of facilities in Minnesota, and provide for several types of permits, depending upon a facility's emissions and needs. A facility may be able to receive a "registration permit" if its actual emissions of air pollutants are low. "General permits" are available for some types of facilities that have similar operations. Other facilities require individual permits tailored specifically to their facility.

- The registration permits allow facilities to submit much less detailed permit application forms. Four options are available, as follows:
  1. Option A: A facility needs a permit solely because a certain New Source Performance Stand applies.
  2. Option B: A facility purchases or uses less than 2,000 gallons of volatile organic compound containing materials in any given 12 months and has no other emissions.
  3. Option C: A facility has emissions only from boilers, internal combustion engines and volatile organic compound containing materials (or a combination of these emissions).
  4. Option D: A facility has **actual** emissions that are less than 50 percent of federal thresholds (see Table 1, next page) and is in a part of Minnesota that meets federal standards for ambient air.
- Facilities can choose to include more than one operating scenario in their permits, meaning that they can alter their operations to achieve economic advantages without having to wait for a permit. This is inherent in a general permit, and can be included in an individual permit.
- The process for amending existing individual permits for insignificant modifications and minor and moderate amendments is more streamlined. Facilities will not have to wait as long to begin construction for these types of amendments.

What triggers the need for a permit?

If your facility has the potential to release pollutants into the air in excess of the thresholds in Table 1, your facility will need either a state or a federal permit.

In addition, there are categories of sources that require permits because new or modified facilities in the categories are subject to New Source Performance Standards. "Performance Standards" define the best way to operate a process to minimize the pollutants emitted. These categories are listed on Table 2 (page 3).

What is the difference between a state permit and a federal permit?

In Minnesota, the Minnesota Pollution Control Agency (MPCA) issues both state and federal permits. Facilities whose potential annual emissions of pollutants fall below federal thresholds but above the state thresholds (where the thresholds are different) will receive state permits.

Minnesota Pollution Control Agency • 520 Lafayette Rd. N., St. Paul, MN 55155-4194 • www.pca.state.mn.us
651-296-6300 • 800-657-3864 • TTY 651-282-5332 or 800-657-3864 • Available in alternative formats

Most state permits will be non-expiring whereas federal permits will need to be reissued every five years. Registration permits are state permits.

Can you tell me whether I need a permit?

Whether or not you need a permit for your facility depends in part on your "potential to emit". Potential to emit, or PTE, can be very different from your actual emissions.

However, this calculation is the first step to take in determining whether you need a permit, and the type of permit you may be eligible for.

Figuring your facility's PTE is a complex process. It requires identifying emission sources, the pollutants released by those sources, and how much pollution would be released if the emission unit were working at maximum design capacity for 24 hours per day, 365 days per year.

The MPCA has created many guidance materials to assist permit applicants, including a permit application guide and a number of fact sheets. All are available on the MPCA's Web site at: www.pca.state.mn.us/index.php/air/air-permits-and-rules/air-permits-and-forms/air-permits-and-forms.html.

How do I apply for a new permit when my existing permit expires?

If you have a total facility permit that was issued under the existing rules, you need to reapply by the expiration date listed on your permit. Some permits issued under the existing rules are non-expiring.

If you have had a Title V permit issued under the current rule, you need to apply to have your permit reissued at least six months before it is due to expire. You need to send the MPCA an e-mail requesting the current facility-specific information from the MPCA's permitting database. You can find instructions on how to do this on the MPCA's Web site at: http://www.pca.state.mn.us/index.php/air/air-permits-and-rules/air-permits-and-forms/air-forms/air-quality-forms-permit-application-notifications-compliance-and-miscellaneous.html?menuid=&missing=0&redirect=1. We have tried to make applying for reissuance less burdensome than the original Title V applications. The completed application is due back to the MPCA 180 days before the current permit expires.

Table 1. Permitting thresholds (based on potential to emit)

Pollutant	State permit threshold	Federal permit threshold
Volatile organic compounds (VOC)	100 tons per year	100 tons per year
Carbon monoxide (CO)	100 tons per year	100 tons per year
Nitrogen Oxides (NO_X)	100 tons per year	100 tons per year
Sulfur dioxide (SO_2)	50 tons per year	100 tons per year
Fine particulate matter (PM_{10})	25 tons per year	100 tons per year
Carbon Dioxide Equivalent (CO_2e)	100,000 tons per year*	100,000 tons per year*
Combined HAPs**	25 tons per year	25 tons per year
Single HAPs**	10 tons per year (each)	10 tons per year (each)
Lead	0.5 tons per year	10 tons per year

* As of July 1, 2011

** HAP = Hazardous Air Pollutant, listed in Table 3

Minnesota Pollution Control Agency

AQ Doc. # 2.05 March 1998

Facts about Odors, Noise, and Dust for Local Governments

A citizen has called your city or town office to complain about a nauseating odor, or dust coming from a local road or business. Or perhaps the complaint is about noises that interrupt sleep or conversations. What do you do?

Sometimes you call the Minnesota Pollution Control Agency (MPCA) or you direct your resident to call the MPCA instead. This fact sheet is designed to let you know what you can expect from the MPCA in these situations and suggest steps you can take when you receive such complaints.

Odors

A high percentage of the air pollution complaints the MPCA receives involve odors. Not only can unpleasant odors spoil residents' enjoyment of the outdoors and seep into their houses to disturb their home environments, but a persistent unpleasant odor can raise concerns about health effects. Even odors that have no real physical effects on the human body can cause temporary nausea and headaches if they are strong enough or unpleasant enough. We have all had the experience of smelling something that has "made us sick."

The MPCA is concerned about odors. However, the MPCA's odor rule has been repealed, because it was difficult, if not impossible, to enforce. Odor problems are generally not constant. Odors travel, linger,

Here's what we recommend you do when you receive a citizen complaint about an odor:

1. Determine the probable source of the odor.
2. Determine whether the odors should be considered nuisances or whether they may indicate the release of toxic air pollutants. The MPCA can help you here. If the source has an MPCA permit, agency staff may be able to suggest possible cause of the odorous emissions. In any case, if the emissions may be toxic, the MPCA wants to know about it for our enforcement records, and so that it can consider the need for emission control measures in future permits.
3. Document the complaint. City and town records of citizen complaints can be of value to the MPCA for enforcement purposes and will also be useful to you if you choose to enforce against the source. Items to document include weather conditions and time, duration, and description of the odor.
4. If you receive many complaints about a local source of odors that cannot be regulated as a toxic air pollutant, decide whether or not to handle the problem under your nuisance ordinance or advise the complainant to take legal action as an affected individual.

or dissipate depending on local weather conditions and activities causing the odors.

The odor rule included procedures for odor testing, using a six-member panel of people to determine whether a particular smell was detectable at various levels of dilution. It established "odor units" and limits on the number of odor units in the air at various points (at the stack, at the property line, in adjacent industrial or residential areas). In 1969, when the rule was adopted, the testing procedure was approved by the American Society for Testing and Materials. In 1986, that organization dropped its approval of the odor-testing procedure. Because the MPCA would not be able to present a good case if an industry were to contest alleged violations in court, the MPCA dropped the odor rule.

That does not mean that the MPCA is giving up on protecting the public from odors in situations where odorous emissions are actually harmful to the environment or public health. It does mean that odors that can be considered merely "nuisance" in nature can be best handled either by the local governing authority or by legal action by the affected parties.

For those odorous emissions that are "pollution" in the sense that they harm human health or the environment, the MPCA will limit emissions in its permits for the facilities causing problems. Substances considered to be toxic air pollutants similarly will be regulated by limiting emissions through permit conditions. Testing of emissions from the stacks or in the ambient air determines how much of these substances are being released and provides reliable data for enforcing the permit terms.

Noise

Noise that disturbs resident's rest, conversation, and peace of mind is another frequent subject of complaints to local governments and the MPCA. Obviously, barking dogs, noisy parties, and similar events are not situations in which the state should get involved.

Minnesota has a noise rule enforced by the MPCA for continuing situations in which noise may be a problem. Many municipalities have adopted the state noise rule as a local ordinance and are able to enforce it successfully. However, many noises may be unquestionably annoying to your residents and still not violate the noise rule. Those are most effectively regulated by local nuisance ordinances.

Here's what we suggest you do when your residents call with complaints about continuing problems with noise. Remember, sometimes businesses are unaware of the noise problems they create, and the solutions can be simple.

1. Contact the source of the noise to attempt an immediate, voluntary solution (or encourage your resident to do so). As with odors, we suggest that you maintain records of these complaints.
2. You may want to take action based on your local nuisance ordinance. Even if the noise violates the state rule, the MPCA's enforcement process is relatively cumbersome, and enforcing noise violations is not as high a priority for the agency as enforcing more serious threats to public welfare and the environment.
3. You may ask the MPCA to monitor the noise. If the noise violates the state noise rule, local or MPCA enforcement is the next step.
4. If the noise does not violate the state rule, your nuisance ordinance is your best bet. The affected resident also has the option of initiating legal action against the facility causing the noise.

The state rule is based on one-hour statistical measurement of noise levels received by a listener. It regulates sources that emit loud noises for more than six minutes out of an hour and persistent noises that occur for more than 30 minutes out of an hour. Limits are lower for night hours and depend upon the type of land usage, requiring lower noise levels in areas that are residential or that require quiet because of health, religious, or cultural facilities, for example.

The MPCA can assist municipalities by sending staff and equipment to monitor noise levels. Local or MPCA follow-up generally has been successful in enforcing the noise rule.

MPCA staff usually work with city planning staff to resolve local noise problems. Enforcement of state motor vehicle noise limits is the responsibility of local law enforcement officials.

The state noise rule does not regulate what is termed "impulse noise." Impulse noise is a brief but loud noise that disrupts normal activities. Because of its short duration and often unpredictable occurrence, monitoring is difficult and usually does not reveal levels above the state noise rules. Impulse noise cannot be effectively regulated by nuisance ordinances.

Dust

A third source of citizen complaints is blowing dust.

State and federal rules include standards for the amount of fine dust particles (less than 10 microns in size) allowed in the air around us. That is because the fine particles have the potential to lodge in our lungs and affect our health. The rules include limits on the emission of dust, and the MPCA includes limits on the release of particulate matter in its air emissions permits for the kinds of facilities that have a potential for releasing particulates from stacks. The permits also require dust-control measures to control the amount of dust produced from sources other than stacks, such as loading and unloading activities. Thus, cement and asphalt operations, grain elevators, and other materials-handling facilities must meet rule and/or permit conditions to limit dust.

Under Minnesota Rules, no one is allowed to cause avoidable amounts of dust to become airborne. This applies to all facilities, regardless of their permitting status.

If these kinds of operations are routinely causing dust problems, the MPCA wants to know about it. The MPCA needs the information in order to enforce the rule and permit conditions. Other dust sources such as roads, construction sites, parking lots, and stockpiles of sand and gravel often can more readily be controlled by your local nuisance ordinances.

Who to Call

Air Quality Complaints: (651) 296-7300

Noise: (651) 296-7898

Toll-free / TTY: (800) 657-3864

TTY: (651)297-5332

Names of complainants remain confidential.

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Minnesota Pollution Control Agency

Majors and Remediation Division
Air Quality Program

Facts about General Air Quality Rules

Air Quality/Federal and State Regulations/#4.01/December 2003

The following is a summary of the state air quality rules to which every business in Minnesota is subject. These rules apply whether a facility needs an air emission permit or not.

Air Emission Fees (Minn. R. 7002.0005 -7002.0085)

This rule identifies who pays fees, the types of fees, the amount of the fees and how the fees are determined. New Facility Fees and Indirect Source Fees are fixed amounts and are listed in the rule.

Air Emission Fees are determined through a formula described in the rule. The fee is assessed to each facility annually as a per-ton charge on actual emissions from the facility.

A process to resolve errors provides for a refund if an error results in an over-assessment of fees. Late charges may be added if fees are not paid on time. The rules also describe the formula that determines the size of the Air Quality budget.

A fact sheet is available on this rule.

Air Emission Permits (Minn. R. 7007.0050 - 7007.3000)

These rules explain when a facility must obtain an air emission permit, the types of permits that are available, and the procedures for obtaining permits. The rules also explain the requirements a facility is subject to when the facility is modified.

There is an Air Quality Permit Rules Fact Sheet available if you would like more information regarding these rules.

Industrial Process Equipment Rule (Minn. R. 7011.0700 - 7011.0735)

Industrial process equipment can create airborne dust or particulate matter as a normal part of its operation. For many types of equipment, such as boilers, specific state rules or federal regulations limit the amount of particulate matter that may be emitted to the atmosphere. Particulate matter emissions from equipment to which no specific state rule or federal regulation applies are limited under the general "Industrial Process Equipment Rule." These limits vary depending on operating conditions. The rule includes a maximum limit that is not to be exceeded.

The owner or operator of a facility is responsible for determining the limit imposed by the rule and must meet the limit at all times.

A fact sheet providing more specific information is available.

Ambient Air Quality Standards (Minn. R. 7009.0010 - 7009.0080)

This rule establishes the maximum allowable concentrations of pollutants that may exist in the air, averaged over a specified period of time.

Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194
(651) 296-6300, toll-free (800) 657-3864, TTY (651) 282-5332 or (800) 657-3864
This material can be made available in alternative formats for people with disabilities.

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These maximum concentrations vary among pollutants, but all established standards protect public health and welfare, as required by the Code of Federal Regulations Title 40, part 50, National Primary and Secondary Ambient Air Quality Standards.

Emissions from stationary sources, either alone or as a group, may cause a violation of an applicable standard. No facility may emit any pollutant in such an amount or in such a manner as to cause or contribute to a violation of this standard.

The Minnesota Pollution Control Agency (MPCA) may request that a facility provide information necessary to demonstrate compliance with ambient air quality standards. In some cases, the MPCA may require performance tests and/or air dispersion modeling.

Note: Part 70 permits will require modeling during the first permit term, if potential emissions of sulfur dioxide, nitrogen oxides, or fine particulate matter exceed 100 tons per year.

Applicability of Standards of Performance (Minn. R. 7011.0010)

This rule states that an owner or operator of an existing emission facility must comply with all applicable state air pollution control rules for existing emission facilities.

The rule also states that an owner or operator who constructs, modifies, or reconstructs an emission facility shall comply with applicable federal New Source Performance Standards, and the standards of performance for a new facility as set forth in the state air pollution control rules.

Circumvention (Minn. R. 7011.0020)

This rule states that no person shall install or use a device or means that conceals or dilutes emissions that would otherwise violate a federal or state air pollution control rule without reducing the total amount of pollutant emitted.

Emission Standards for Visible Air Contaminants (Minn. R. 7011.0100 - 7011.0115)

This standard applies to any emission facility for which no other specific performance standard exists. An existing emission facility subject to this standard cannot discharge into the atmosphere any gases displaying more than 20 percent opacity, except that a maximum of 40 percent opacity is allowed for four minutes during any 60 minute period.

A new emission facility cannot discharge into the atmosphere any gases displaying more than 20 percent opacity, without exception. The MPCA may require a facility to conduct a performance test to demonstrate compliance with the standard. Any required performance test shall use the methods described in the rules for visual determination of opacity, unless the MPCA approves another method.

Preventing Particulate Matter From Becoming Airborne (Minn. R. 7011.0150)

This rule states that no person shall cause or permit the handling, use, transportation, or storage of any material in a way that may allow avoidable amounts of particulate matter to become airborne.

In addition, no person shall allow a building or its additions, a road, a driveway, or an open area to be constructed, used, repaired, or demolished without applying reasonable measures necessary to prevent particulate matter from becoming airborne.

The MPCA may require reasonable control measures including, but not limited to paving or frequent clearing of roads, driveways, and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.

Continuous Monitoring (Minn. R. 7017.1000)

This rule gives the MPCA Commissioner the authority to require facilities to install and conduct performance evaluations of continuous emissions monitoring systems (CEMS). The rule includes requirements for frequency of data collection, calibration and adjustments, and data reduction.

Monitoring system specifications are found in 40 CFR 60, appendix B.

Performance Tests (Minn. R. 7017.2001 - 7017.2060)

The performance test rule must be followed when a facility conducts any air emission test. This rule describes notification, reporting, quality assurance, and required operating conditions for performance testing.

A company that conducts a performance test must give the MPCA written notice of testing and submit a test plan at least 30 days in advance of the planned testing. A pre-test meeting must be held at least seven working days prior to the test in order to discuss and finalize the test plan.

Within 45 days of completing the test, the facility must submit a report containing the results of the test and documenting the operating conditions of the emission unit.

More detail on this rule can be found in a separate fact sheet.

Reports (Minn. R. 7019.2000)

This rule states than an owner or operator who is required to install a CEMS shall submit a written report of excess emissions for every calendar quarter. This report is required to be postmarked by the thirtieth day following the end of each calendar quarter.

The report must identify time periods during which the monitoring system was inoperative. The rule requires that owners and operators maintain files of all measurements and maintain records of facility operation and periods during which the continuous monitoring system is inoperative.

Emission Inventory (Minn. R. 7019.3000 - 7019.3100)

The Emission Inventory rule states that any facility required to obtain a state or Part 70 permit and all facilities with the potential to emit 25 tons per year or more of any criteria pollutant must submit annual inventories to the MPCA by April 1st of the year following the year being reviewed.

Emission inventories quantify the amount of pollutants a facility releases into the environment each year. Emission factors from EPA document AP-42 and those derived by the MPCA will be used by default unless a facility quantifies its emissions with one of the following acceptable methods:

- CEMS results for the year in question;
- Stack Tests (Performance Tests) results for the year in question;
- Volatile Organic Compound material balance; or
- Sulfur Dioxide material balance.

A fact sheet on the inventory and fee rule is available.

Motor Vehicles (Minn. R. 7023.0100 - 7023.0120)

This standard regulates the emission of visible air contaminants from internal combustion engines powering motor vehicles designed for use on public highways. This rule separates vehicles powered by diesel cycle engines from other internal combustion engines.

Diesel cycle engines manufactured prior to January 1, 1973, may not emit visible air contaminants over 20 percent opacity for more than 20 consecutive seconds, while those manufactured after January 1, 1973, may not emit more than 10 percent opacity for the same time period.

Vehicles powered by any other engine may not emit visible air contaminants at any opacity level for more than 10 consecutive seconds, regardless of manufacture date. The emission restrictions mentioned above also apply to other internal combustion engines, such as those found in trains, boats, and construction equipment.

This rule also restricts tampering with the air pollution control systems on motor vehicles. With the exception of repair or replacement, no person may remove, alter, or make pollution control equipment inoperative. In addition, ownership of a motor vehicle cannot be transferred unless all air pollution control systems are in place and in operating condition.

Noise Pollution Control (Minn. R. 7030.0010 - 7030.0080)

These rules describe the maximum sound levels allowed under different scenarios. No person may violate these standards, which establish three noise area classifications with respectively increasing levels of allowable sound.

The first classification includes lodging and residential locations, along with educational, religious, and cultural entertainment activities.

The second classification applies to transportation passenger terminals (e.g. bus, rail, marine, air, and auto), most retail and recreational activities.

The third classification includes most manufacturing facilities, modes of material transportation (e.g. bus, rail, marine, auto, air), and natural resource production and extraction activities, such as agriculture, forestry, and mining.

The MPCA can require a facility to conduct sound measurements to demonstrate compliance with the applicable noise standard.

To obtain additional information or fact sheets on any of these topics, please call the MPCA Customer Assistance Center at (651) 297-2274 or (800) 646-6247 (with Minnesota only).

Printed copies of the rules are available from the Minnesota Bookstore. To order a copy, you may contact the bookstore at (651) 297-3000.

MPCA Web site: http://www.pca.state.mn.us

ARTICLE IV. PERFORMANCE STANDARDS

43.33 PERFORMANCE STANDARDS.

(a) Compliance with Regulations. No land or building in any district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable fire, explosive or other hazard, noise or vibration, smoke, dust, odor or other form of air pollution, heat, cold, dampness, electrical or other substance, condition or element in such a manner or in such amount as to adversely affect the surrounding area or adjoining premises (referred to herein as "dangerous or objectionable elements"); provided, that any use permitted or not expressly prohibited by this chapter may be undertaken and maintained if it conforms to the regulations of this section limiting dangerous and objectionable elements at the point of the determination of their existence. (08-17-59)

(b) Enforcement Provisions Applicable to Other Uses. Even though compliance with performance standards procedure in obtaining a zoning certificate is not required for a particular use, initial and continued compliance with performance standards is required of every use and provisions for enforcement of continued compliance with performance standards shall be invoked by the zoning administrator or board as the case may be, against any use, if there are reasonable grounds to believe that performance standards are being violated by such use. (08-17-59)

(c) Nonconforming Uses. Certain uses established before the original effective date of the regulations of this chapter and nonconforming as to performance standards shall be given a reasonable time in which to conform therewith, as provided in Section 43.32(e). (08-17-59)

(d) Locations where Determinations are to be Made for Enforcement of Performance Standards. The determination of the existence of any dangerous and objectionable elements shall be made at the location of the use creating the same and at any points where the existence of such elements may be more apparent (herein referred to as “at any point"); provided, however, that the measurements necessary for enforcement of performance standards set forth in this section shall be taken at different points in different districts in relation to the establishment or use creating the element being measured (herein referred to as "point of measurement") as follows:

(1) In any R District and B-1 and B-2 Districts. Twenty-five feet from the establishment or use or at the lot line of the use, if closer to the establishment or use.

(2) In B-2.5, B-3 and M Districts. At the boundary of the district or at any point within an adjacent R district.

(e) Performance Standards, Regulations. The following provisions, standards and specifications shall apply:

(1) Fire and explosion hazard. All activities involving and all storage of inflammable and explosive materials shall be provided at any point with adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire suppression equipment and devices standards in the industry. Burning of waste materials in open fire shall

be prohibited at any point. The relevant provisions of state and local laws and regulations shall also apply.

(2) Radioactivity or electric disturbance. No activities shall be permitted which emit dangerous radioactivity at any point or electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of such disturbance.

(3) Noise. Repealed 04/16/79

(4) Vibration. No vibration shall be permitted which is discernible without instruments at the points of measurement specified in subsection (d) above.

(5) Smoke. No emission shall be permitted at any point, from any chimney or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 of the Power's Micro-Ringlemann Chart, published by McGraw-Hill Publishing Company, Inc., and copyright 1954 (being a direct facsimile reduction of the standard Ringlemann Chart as issued by the United States Bureau of Mines), except that visible gray smoke of a shade equal to No. 2 on said Chart may be emitted for 4 minutes in any 30 minutes. These provisions applicable to visible gray smoke shall also apply to visible smoke of different color but with an apparently equivalent capacity.

(6) Odors. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be offensive at the points of measurement specified in subsection (d) above. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail. There is hereby established as a guide in determining such quantities of offensive odors Table III, "Odor Thresholds," in Chapter 5 "Air Pollution Abatement Manual," copyright 1951 by Manufacturing Chemists' Assn., Inc., Washington, D.C.

(1) Fly ash, dust, fumes, vapors, gases, and other forms of air pollution. No emission shall be permitted which can cause any damage to health, to animals, vegetation or other forms of property, or which can cause any excessive soiling, at any point; and in no event any emission, from any chimney or otherwise, of any solid or liquid particles in concentrations exceeding 3/10 grains per cubic foot of the conveying gas at any point. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of 500 degrees Fahrenheit and 50 percent excess air.

(2) Glare. No direct or sky-reflected glare, whether from floodlights or from high-temperature processes, such as combustion, welding or otherwise, so as to be visible at the points of measurement specified in subsection (d) above. This restriction shall not apply to signs otherwise permitted by the provisions of this chapter.

(3) Liquid or solid wastes. No discharge at any point into any public sewer, private sewage disposal system or stream or into the ground, except in accord with standards approved by the department of health of the state

or standards equivalent to those approved by such department for similar uses of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements. (08-17-59)

Ord. No. 2327 03/01/76 Ord. No. 3788 04/06/09

43.30 PERFORMANCE STANDARDS PROCEDURE. The board of adjustment shall have the power to authorize, upon application in specific cases, filed as hereinafter provided, issuance of a zoning certificate for uses that are subject to performance standards procedure under Section 43.63 as provided in the following:

(a) Application. An application for a zoning certificate for a use subject to performance standards shall be submitted in duplicate on a form prescribed by the board of adjustment. The applicant shall also submit in duplicate a plan of the proposed construction or development, including a description of the proposed machinery, processes, products and specifications for the mechanisms and techniques to be used in restricting the emission of dangerous and objectionable elements as set forth in Section 43.33, in accordance with rules prescribed by the board specifying the type of information required in such plans and specifications. The fee for such application shall include the cost of the special reports that may be required to process it, as set forth in Subsection (b) of this section.

(b) Report by Specialists. If, in its opinion, the proposed use may cause the emission of dangerous or objectionable elements, the board may refer the application to one or more specialists qualified to advise as to whether a proposed use will conform to the applicable performance standards specified in Section 43.33 for investigation and report. Such consultant shall report as promptly as possible after his receipt of such application. A copy of such report shall be promptly furnished to the applicant.

(c) Review by Board. Within 30 days after the board of adjustment has received such application or such report, if a report was required, or within such further period as agreed to by the applicant, the board shall decide whether the proposed use will conform to the applicable performance standards, and on such basis shall authorize or refuse to authorize issuance of a zoning certificate or require a modification of the proposed plan of construction or specifications, proposed equipment or operation. Any zoning certificate so authorized and issued shall be conditioned upon, among other things:

(1) The applicant's completed buildings and installations conforming in operation to the applicable performance standards.

(2) The applicant paying the fees for services of the expert consultant deemed reasonable and necessary by the board to advise the board as to whether or not the applicant's completed buildings and installation in operation will meet the applicable performance standards.

(d) Continued Enforcement. The zoning administrator shall investigate any purported violation of performance standards and, if there is reasonable grounds for the same, shall notify the board of the occurrence or existence of a probable violation thereof. The board shall investigate the alleged violation, and for such investigation, shall employ qualified experts. If, after public hearing on due notice, the board finds that a violation occurred or exists, a copy of such findings shall be forwarded to the city council. The services of any qualified experts employed by the board to advise in establishing a violation shall be paid by the violator if such violation is established, otherwise by the city.

Only those uses specified in the M-2 district as subject to performance standards and use accessory thereto, are subject to performance standards procedure specified in this section in obtaining a zoning certificate, unless the zoning administrator has reasonable grounds to believe that another proposed use is likely to violate performance standards, in which event the applicant shall comply with performance standards procedure in obtaining a zoning certificate. (08-17-59)

PLANNING COMMISSION

AGENDA ITEM:	**5. Sensitive Land Development Ordinance Amendments**
PREPARED BY:	**Mark Moeller**
DATE:	**February 27, 2012**

Following the Commission's February 13th hearing of this subject, additional questions arose relative to provision 11 of the present ordinance that speaks to the field identification of Natural State Areas. In part, concerns were expressed that the provision does not include a "permanent" visual identification of Natural State Areas outside of initial site construction. Given this discussion, proposed changes to this section are reflected on the attached (page 7) amendment. Although self explanatory, this language would continue to require the field marking of NSA boundaries (per the final plat). Under new language field identification would be taken a step further by requiring the construction of posts (with signs) at specified locations along NSA boundaries. All signs would need to be located before site disturbance is initiated. Although the City would specify sign design and supplier, the developer would be responsible for ordering signs.

Once the Commission is satisfied that the full amendment package is acceptable, a motion to approve and forward it to Council would be in order.

Attachments

I. ENVIRONMENTALLY SENSITIVE LANDS DEVELOPMENT ORDINANCE

1. Purpose and Intent

~~The purposes of the Environmentally Sensitive Lands Development Ordinance are to identify and protect environmentally sensitive lands in the City and to promote the public health, safety, and welfare by providing appropriate and reasonable controls for the development of such lands. Regulations of this ordinance are intended to:~~

In part, the City of Winona's identity is defined by a strong natural setting that, without limitation, includes forested bluffs and valleys, rivers and streams, and a diversity of plant and animal habitats. Pursuant to goals and objectives of the City Comprehensive Plan, the preservation of these natural resources for future generations, is highly recommended. The intent of this ordinance is to promote methods of conservation that will serve to achieve these goals, as well as those purposes of City Code Section 43.03, through the land platting process.

~~1. Protect people and property from hazardous conditions characteristic of environmentally sensitive lands and their development. Such hazards include rockfalls, rolling boulders, other unstable slopes, flooding, flood-related mudslides, subsidence, erosion, sedimentation, and unstable soils.~~

~~2. Protect and conserve significant natural and visual resources. Such resources include major rock outcrops, major ridges and peaks, wildlife habitat, unique vegetation, significant riparian habitats, wetlands, and rare and threatened species.~~

~~3. Protect the quality of resources, such as water quality, air quality, soils, and natural vegetation.~~

~~4. Minimize the public costs of providing public services and facilities, such as streets, water, sewer, emergency services, sanitation services, parks, and recreation.~~

~~5. Ensure that decisions regarding development in environmentally sensitive areas are based on the most complete and accurate information available.~~

~~6. Minimize the negative impacts of development by controlling their location, intensity, pattern, and design.~~

~~7. Retain the visual character of the natural landscape to the greatest extent feasible by regulating grading location, design, and treatment.~~

~~8. Maintain significant open spaces that provide view corridors and land-use buffers, protect landmarks, and maintain the City's natural setting.~~

~~9. Protect environmentally sensitive lands, while also recognizing the legitimate expectations of property owners and the City's overall economic goals.~~

~~10. Encourage innovative planning, design, and construction techniques for development within environmentally sensitive areas.~~

2. Natural State Areas (NSA) Established

The following environments shall be designated as NSA on any approved preliminary,or final plat:

* Any delineated wetland that is not to be impacted, or otherwise replaced, pursuant to MN Rules Chapter 8420.
* Land located within a defined Bluff Impact Overlay District.
* All lands located within 100 feet from the normal high water mark of any Special Water river or stream, as defined per Section 69.04. In the case of all other water bodies listed, shore impact zones shall be NSA. This requirement does not apply to water crossings, or limited water access if documented pursuant to requirements of Section 68.07 (K) (8).
* Any other environment that is, following special study, or by state/federal law, required to be maintained in an undisturbed condition.

Land designated as Natural State Areas (NSA) shall be set aside, and maintained, as permanent undisturbed open space.

Once designated on either an approved preliminary, or final, plat, no person shall conduct any activity that would disturb topographic soil, or vegetative conditions of the NSA from those conditions which existed at the time of plat approval. The term "disturb" includes, but is not limited to, grading, filling, excavating, the constructing buildings, fences, driveways, sidewalks, patios, retaining walls, and public/private utilities on, or the cutting, mowing or removal of dead or living vegetation from the area, unless in conformance with Section 4. land disturbance activity, within an NSA, unless in accordance with this section. The term "Land Disturbance Activity" shall be defined as a change in the use of land that would result in any form of topographic modification, increase in impervious surface coverage, or vegetative alteration. Land disturbance activity shall include, but not be limited to:

a. Any extent of grading, grubbing, filling, and excavating.
b. The construction of any structure, building, impervious walk/path, swimming pool, deck, patio, driveway, street, retaining wall, and public/private utility.
c. The establishment of formal lawns and gardens, or the cutting, thinning, and/or removal of existing living and dead vegetation.

This term shall not include the removal of diseased or dead vegetation, nor to home lawn, garden and landscaping maintenance activities established prior to NSA designations of a property.

This term shall not include:

A. Any NSA site condition representing an immediate safety hazard to persons or property. The City Planner, following consultation with qualified people, shall document such a hazard. Once documented Following documentation of the hazard by the City Planner, or designated representative, the underlying property owner of the NSA shall be responsible for its immediate correction. This action may employ any reasonable method provided that is consistent with the intent and purpose of this section, and will result in the least possible intrusion on remaining NSA lands necessary to mitigate the

hazard, provided that adjacent NSA lands are not impaired. Should the property owner fail to correct the hazard, it may be abated in accordance with provisions of Chapter 32.

B. The removal of noxious weeds, as defined by Minnesota Rules Section ~~1505.0730~~1505.0751, Subp. 8, from a designated NSA, provided that the method of removal is by hand pulling, hand cutting, and/or the hand application, excluding sprays, of appropriate herbicides. If the method of noxious weed removal involves the use of motorized or mechanical equipment, spraying, or the disturbance of vegetation which is not classified as noxious, ~~Planning Commission~~ approval shall be required pursuant to subpart 4.

~~Land designated, as NSA, shall be maintained as permanent natural open space. Once established on the approved final plat, no person shall fill, excavate, construct buildings, fences, driveways, retaining walls, public/private utilities on, remove dead or living vegetation from, or mow, the area, unless in conformance with Section 4.~~

~~For purposes of this section, Natural State Areas shall include those environments specified within either Table A or B below:~~

~~TABLE A~~
~~(Natural State Area Requirements – All Environments)~~

~~100 Percent of the following environmental conditions shall be set aside as Natural State Areas (NSA):~~

- ~~Defined wetlands~~
- ~~Watercourse floodways~~
- ~~Rare plant and animal habitats, as defined by Minnesota County Biological Survey (1996)~~
- ~~Shoreland Corridors as defined in the following schedule:~~

~~Average Slope within 100 feet from the Outer Limits of an Adjacent Floodway~~	~~*Width of Natural State Corridor – from Outer Limits of Adjacent Floodway~~
~~0- 10%~~	~~50 Feet~~
~~11-29%~~	~~75 Feet~~
~~30%+~~	~~100 Feet~~

- ~~Slopes with average grades exceeding 30% – See Table B~~

~~*Excluding public access to or over the water body provided that the purpose and intent of this section is complied with to the greatest extent possible.~~

~~TABLE B~~
~~Natural State Requirements B Slopes~~

~~In addition to the requirements of Table A, whenever a subdivision is proposed in an area in which the average slope off any lot is 10 percent and above, the following schedule shall be required for calculating Natural State Areas. Natural State requirements shall be applied to the development site as on a lot-by-lot basis:~~

~~Natural State Area~~

Percent Average Lot Slope	*Requirement Percentage
10-14	30
15-19	35
20-24	45
25-29	65
30+	100

*The calculation of average slope shall be determined by use of the following formula:

$$\text{Average Slope} = \frac{.0023 \times I \times L}{A}$$

I = Contour interval (in feet)
L = Total length of contour lines (in feet) within subject parcel
A = Area (acres) of subject parcel

The intent of this section is that development should be permitted on those portions of a lot with the least slope grades and that Natural State Requirements will be applied first to those portions of the lot with the greatest slope grades. In no event shall significant portions of any lot, where those portions exceed slope grades of 25% be disturbed. For purposes of this section, the term "disturbed" shall have the same meaning described under Section 2.

Natural State Areas shall not include any easement which would result in the disturbance of native ground cover or other vegetation.

3. Determination of Maximum Density
If applicable, Natural State Areas may be used in calculating the maximum density of a lot. Natural State Areas may be used , and to fulfill lot area and yard requirements, provided that they are not disturbed , unless in conformance with subpart 4. However, no structure shall be located closer than 75 feet from any limit of a defined floodway or wetland.

4. Disturbance of Natural State Areas
Once established on the an approved preliminary, or final, plat, no natural state area shall be disturbed, as defined under Section 2, for any public or private purpose unless approved by the Planning Commission. Any request to disturb a Natural State Area shall be submitted in writing to the Department of Community Development and shall be accompanied by plans or other materials which fully explain the intended action. Following receipt of the request, it shall be forwarded to any state or federal agency having jurisdiction over the environment, for applicable comment. Following receipt of these, the Planning Commission shall hold a public hearing which shall be preceded by a minimum of 10 days written notice to all property owners located within 150' from the area to be disturbed. abutting the parcel containing the disturbance, and to the official newspaper.

Prior to approving the request, the Planning Commission should seek the recommendation of the Citizens Environmental Quality Committee and must find that undue hardship exists and that approval will not adversely impact the purpose and intent of the natural state area. The Commission may apply any condition it deems appropriate to achieve these purposes, or needed to address noted concerns of any entity offering comment. For purposes of this section, the term "undue hardship" shall be the same as defined under Minnesota Statutes, Section 462.357 (Subd. 6)(2).

Unless associated with an exemption listed under Section 43.83 (c), or use otherwise subject to a specific exemption, or associated with any use listed under

Section 43.83 (F), no land disturbance activity shall be permitted on any established NSA designation.

Any person who feels that the strict enforcement of this section, would cause practical difficulties, because of circumstances unique to his/her property may request a variance from the Board of Adjustment. In cases where the management of ~~an~~ a specific environment falls under the jurisdiction of a State, ~~or~~ Federal, or other agency, the Board shall seek ~~an opinion~~ required approvals, or opinion, from the agency, prior to acting on the variance.

~~Notwithstanding the foregoing, Planning Commission approvals shall not be required for the following activities:~~

~~5 Transfer of Natural State Areas~~
~~The Planning Commission may authorize a Natural State Area, as calculated from Table B, to be transferred from one lot to any other lot within the limits of a subdivision, provided that:~~

~~a. The Commission finds that a valid reason for the transfer exists and that the action will be consistent with the intent and purpose of this section.~~

~~b. The transfer of Natural State Area land may be applied to any part of the subdivision, excluding therefrom, any natural environment which is defined under Table A.~~

~~c. The transfer of Natural State Area land shall be permitted from any lot with an average slope which does not exceed 19%.~~

~~d. The transfer shall not result in a net loss of Natural State Area land to the subdivision.~~

6. Modification of Natural State Area
Following final plat approval, no boundary of a defined Natural State Area may be modified unless the modification is submitted to the Planning Commission and City Council for approval, pursuant to the requirements of Sections 42.03(e) and (f).

7. Preservation Method
The applicant for subdivision approval shall demonstrate to the satisfaction of the Planning Commission and City Council that a required Natural State Area will be permanently maintained. Methods acceptable for this purpose include: special agreements, easements, or donation or dedication to the City, or other public entity. Once the method of preservation is defined, it shall clearly be ~~stated~~ referenced on the final plat. Any agreement, easement, or other preservation document shall be recorded with the plat, and shall serve as a restriction to any ~~the development of any parcel of the subdivision, which is subject to~~ Natural State ~~Requirements~~ Area designation.

~~8. Review Criteria~~
~~During consideration of a subdivision, which is subject to Natural State Requirements, the Planning Commission shall investigate and ascertain whether the proposed subdivision complies with the following general criteria:~~

~~(a) That the plan is consistent with the intent and purpose of Chapters 42 and 43 of the Winona City Code.~~

(b) That properties adjacent to, or down slope/stream from, the subdivision will not be adversely affected.

(c) That the plan will protect and preserve natural features of the site which if disturbed, could adversely impact future residents of the development, and result in increased public maintenance costs.

(d) That grading of the site will complement natural land forms thereby preventing the need for excessive terracing.

(e) That the plan will be designed to harmonize with topographic, vegetative, and other natural characteristics of the site.

(f) That consideration is given to the view of hillsides as well as the view from hillsides.

Note: Although parts 9 and 10 are to be deleted from this section, it is proposed that language would be transferred to Code Sections 42.04 and 42.06 (required information for preliminary and final plats.)

9. Preliminary Plat B Additional Requirements
In addition to the requirements of City Code Section 42.04, the developer of any site, which is subject to the Natural State Requirements of Table A and Table B, shall submit the following with the preliminary plat:

a. Proposed Natural State Area calculations (reference to Table "A" or "B". The locations of Natural State Areas shall be clearly shown on the plat. Additionally, the developer shall submit any draft document, which will define the method of preserving Natural State Areas for their intended purpose.

b. A preliminary grading management plan. This plan shall be prepared by a registered civil engineer, licensed in the State of Minnesota, and shall include the following information:

1. The total extent of areas to be disturbed.

2. Proposed cut and fill areas along with proposed finished grade percentages.

3. Proposed surface drainage patterns and runoff calculations, which are anticipated to occur as a result of development.

4. Proposed ponding areas, which may be required to minimize adverse impacts on adjacent properties or public stormwater facilities.

5. Proposed street grades/elevations.

6. Anticipated erosion control measures, which will be required minimize the adverse effects on adjacent properties, defined Natural State Areas, and public facilities. In meeting this requirement, the developer shall clearly state the person who will be responsible for its implementation.

7. Development timing.

~~8. In accordance with Section 7, the developer will permanently maintain Natural State Areas, and use methods to clearly identify and protect those areas throughout all construction phases of the development. Examples of field identification include fencing and/or construction tape/ribbon.~~

~~10 Final Plat – Additional Requirements~~
~~In addition to the requirements of City Code Section 42.06(b), the developer of any site, which is subject to the Natural State Requirements of Table A and Table B, shall submit the following with the final plat:~~

~~a. Final Natural State Area calculations. Additionally, all required Natural State Areas shall be clearly shown on the final plat.~~

~~b. A final grading management plan which, at a minimum, shall include those requirements of Section 9(b).~~

8. Natural State Areas B Field Identification
Upon ~~preliminary~~ final plat approval, no portion of the development may be disturbed until such time that Natural State Areas are clearly field identified and protected pursuant to methods as outlined in the approved ~~preliminary~~ final grading management plan. ~~It shall be the responsibility of the developer and/or property owner to ensure that all Natural State Areas are clearly marked throughout all construction phases. Additionally~~ Once identified, it shall be the responsibility of the developer, property owner, or, in the case of those public improvements which may be administered by the City of Winona, the City, to advise contractors of the location, purpose and intent of such areas, and to ensure that such areas are not disturbed. ~~The corners of all required Natural State Areas shall be staked, in the field, with one-half inch diameter iron pipes prior to final plat approval. All such stakes shall remain in place and shall remain identifiable throughout any development of the site.~~ For purposes of, this section, all Natural State Area boundaries, of an approved final plat, shall be field staked by a Minnesota Registered land surveyor. Once established, the developer shall locate steel sign posts at all points where a Natural State Area intersects with a lot line, or at 150 foot intervals , whichever is less. Such posts shall have a total length of six feet, when installed have an exposed height of three feet above the ground, and shall include a 10"X10" metal sign identifying land beyond the post as a Natural State Area. Although the City will specify the design and supplier of signs, the developer shall be directly responsible for their order and payment. All signs, required under this provision, shall be constructed prior to initiating any land disturbance of the site, and shall remain intact/identifiable at all times. If a stake is removed or lost, the underlying property owner of the Natural State Area shall be responsible for its replacement. Ord. 3491 05/07/01 Ord. 3536 07-01-02.

9. Natural State Areas – Previous Approval

Any Natural State Area that was created prior to adoption of this ordinance shall continue to be managed and maintained in accordance with terms and conditions of its initial approval.

CHAPTER 69 - SHORELAND MANAGEMENT

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69.06 Nonconformities
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69.07 Subdivision/Platting Provisions
- (a) Land Suitability
- (b) Consistency with Other Controls
- (c) Information Requirements
- (d) Dedications
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- (f) Controlled Access or Recreational Lots

E. Severability

If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

F. Abrogation and Greater Restrictions

It is not intended by this chapter to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

G. Definitions

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this chapter its most reasonable application. For the purpose of this chapter, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

Accessory structure or facility. Any building or improvement subordinate to the principal use that, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks

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

(1) Part or all of the feature is located in a shoreland area;
(2) The slope rises at least 25 feet above the ordinary high water level of the waterbody;
(3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level ~~averages 30 percent or greater~~ exceeds 25 percent; and
(4) The slope must drain toward the waterbody.

Bluff impact zone: A bluff and land located within 20 feet from the top of a bluff.

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.

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

Commissioner: The Commissioner of the Department of Natural Resources.

Conditional use: A land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning code exist, the use or development conforms to the comprehensive land use plan of the City, and the use is compatible with the existing neighborhood.

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 feet above ground.

Duplex, triplex, and quad: A dwelling structure on a single lot, having two, three, and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

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 50 percent of the structure setback.

Shoreland: Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from the ordinary high water level of a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. 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 and when approved by the commissioner.

Significant historic site: Any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

Steep slope: Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this chapter. Where specific information is not available, steep slopes are lands having average slopes over 18 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

Structure: Any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

Subdivision: Land that is divided for the purpose of sale, rent, or lease.

Surface water-oriented commercial use: The use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

Toe of the bluff: The lower point of a 50-foot segment with an average slope exceeding 18 percent.

Top of the bluff: The higher point of a ~~50~~100-foot segment with an average slope exceeding 18 percent.

Variance: The same as that term is defined or described in Minnesota Statutes, Chapter 462.

Water-oriented accessory structure or facility: A small, above ground building or other improvement, 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 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.

Wetland: A surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition)

69.03 ADMINISTRATION

A. Notifications to the Department of Natural Resources

1. Notice of Public Hearings. 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 ten days

of this section are different from those of the underlying zoning district, the more restrictive requirement shall apply.

C. Conditional Uses

All conditional uses and applicable attached conditions allowed and regulated by the applicable zoning district underlying the shoreland overlay district as indicated on the Official Zoning Map of the City shall be treated as conditional uses in the shoreland overlay district, subject to the provisions in Section 69.05 of this Chapter. Where requirements of this section are different from those of the underlying zoning district, the more restrictive requirement shall apply.

D. Prohibited Uses

Any uses which are not permitted or conditional uses as regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the Official Zoning Map of the City are prohibited.

E. Certain Shoreland Areas Exempted from Certain Requirements of this Chapter – Urban Shoreland Zone

Minnesota Rules 6120.2800 provides for the flexible implementation of shoreland regulations under certain circumstances. The City of Winona finds that certain areas of shoreland existing within the community have been developed with an assortment of urban land uses for many years and much of that development does not meet the minimum standards contained within Chapter 6120 of the Minnesota Rules. Further, it has been determined that these shoreland areas are predominantly separated from public waters by man-made dike or levee systems. Based upon these findings, the shoreland areas identified on the Official Zoning Map as being within the area designated as Urban Shoreland Zone are exempted from meeting the following performance standards contained within this Chapter:

1. Lot width for lakes or rivers
2. Lot area for lakes
3. Structure setbacks from right-of-way lines
4. Height of structures if proposed height is compatible with underlying zoning
5. Impervious surface coverage of lots must not exceed 25 percent of the lot area.

Lots and structures located within the Urban Shoreland Zone shall not be considered as non-conforming if they are not in compliance with the exempted standards listed above. They shall be treated as non-conforming lots or structures if they are not in compliance with the other applicable standards contained within this Chapter and shall be treated as per the requirements of Section 69.06 of this Chapter with respect to the non-exempted shoreland standards.

F. Certain Shoreland Areas – Undisturbed Buffer Zone

An undisturbed buffer zone of not less than 100 linear feet from any special water (not including intermittent tributaries) shall be maintained at all times. Exemptions to this requirement may include water crossings, or vehicular water access, if an applicant fully documents, through a Storm Water Pollution Prevention Plan (SWPPP) the circumstances and reasons that the buffer encroachment is necessary. The SWPPP must show how potential water quality, scenic, and other environmental impacts of these exceptions will be minimized.

69.05 PERFORMANCE STANDARDS

A. 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 Chapter for the lake and river/stream classifications are the following:

(6) all efforts shall be made to minimize the number of stairways, lifts, and landings to a water body by encouraging cooperative arrangements providing for the joint development and use of such facilities by riparian owners.

(7) 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 subsections (1) to (5) above are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.

d. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the value of the site unless adequate information about the site has been removed and documented in a public repository.

e. Steep Slopes. The City Manager or his/her designee must 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 waters, assuming summer, leaf-on vegetation.

3. Height of Structures. All structures in residential districts, except churches and nonresidential agricultural structures, must not exceed 25 feet in height. Structures located in areas that are required to be flood-proofed may have a height not greater than 25 feet higher than the lowest finished floor elevation allowed under applicable regulations.

C. Shoreland Alterations

All alterations of vegetation and topography ~~will~~ shall fully adhere to Chapter 68, and 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. If the shoreland includes ~~a part of~~ a Natural State Area ~~as designated under Chapter 42 of the City Code, no alterations within the Natural State Area are permitted~~ designation, the area shall be managed and maintained in accordance with City Code Chapter 42, Appendix 1, I.

1. Vegetation Alterations.

a. Exemption. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 69.05 D of this Chapter are exempt from the vegetation alteration standards that follow.

b. Removal or Alteration of Vegetation. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Section 69.05 E.2, is allowed subject to the following standards:

(1) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed compliant with Section 68.04 of this Code.

(2) In shore and bluff impact zones and on steep slopes, no clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed unless necessary to mitigate a hazard to life/property and any vegetation removal within bluff impact zones must be compliant with an erosion and sediment control plan per Section 68.04 of this Code.

(3) The above provisions in (1) and (2) are not applicable to the removal of trees, limbs, or branches that are dead or diseased.

2. Topographic Alterations/Grading and Filling and Stormwater Management.

a. Stormwater Management. The City of Winona Stormwater Management Chapter must be adhered to for All grading, filling, excavation, and stormwater management activities, within the shoreland, must fully adhere to Chapter 68.

b. Grading and Filling Permit. Notwithstanding other requirements of the Stormwater Management Chapter 68, a grading and filling permit will also be required for:

(1) the movement of more than ten (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.

c. Additional Requirements. 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 within the shoreland overlay zone:

(1) Impervious surface coverage of lots must not exceed 25 percent of the lot area;

(2) Fill or excavated material must not be placed in bluff impact zones;

(3) Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner of natural resources under Minnesota Statutes, Chapter 103G;

(4) 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; and

(5) 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.

d. Connections to Public Waters. 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 of natural resources has approved the proposed connection to public waters.

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

1. Design. Public and private roads and parking areas 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, or other applicable technical materials.

2. Setbacks. 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 no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.

3. Watercraft Access. 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 subsection are met. For private facilities, the grading and filling provisions of Section 69.05 C.2. of this Chapter must be met.

E. Special Provisions for Commercial, Industrial, Public/Semipublic, Agricultural, Forestry and Extractive Uses and Mining of Metallic Minerals and Peat.

1. Standards for Commercial, Industrial, Public, and Semipublic Uses.

32.03 WEEDS.

(a) "Weeds" Defined. "Weeds" shall mean and include not only such noxious weeds as are enumerated in Minnesota Rules ~~1505.0730~~1505.0751 subp. 8, but also such undesirable, useless, uncultivated and troublesome plants as are commonly known as weeds to the general public and all pollen producing plants which are a hazard to hay fever sufferers. Ord. 3450 05/01/00

CHAPTER 42 - SUBDIVISION REGULATIONS

42.04 The Preliminary Plat

(d) Existing and Proposed Features to be Shown. The preliminary plat shall clearly show the following features and information:

(1) Name. The proposed name of the subdivision which shall not duplicate or closely approximate the name of any other subdivision in Winona County.

(2) Owners record. The names and addresses of the owner of record, the subdivider and the engineer or surveyor.

(3) Abutting owners. The name of adjacent subdivisions and the names of record owners of adjacent parcels of unplatted land.

(4) Boundary lines. The boundary lines, accurate in scale, of the tract to be subdivided.

(5) Streets, Other features. The location, widths and names of all existing or platted streets or other public ways within or adjacent to the tract, and other important features such as existing permanent buildings, large trees, watercourses, railroad lines, corporation lines, township lines, etc.

(6) Existing utilities. Existing sewers, water mains, culverts and other underground structures within the tract and immediately adjacent thereto with pipe sizes and grades indicated.

(7) Topography. Contours, normally with intervals of 2 feet references to U.S.G.S. datum, as required by the commission.

(8) Proposed Design, Streets, Grading, Utilities, Etc. The layout, names and widths of proposed streets, alleys and easements; the layout, numbers and approximate dimensions of proposed lots. Proposed street names shall not duplicate or closely approximate any existing street names in the City of Winona/City of Goodview, except extensions of existing streets. Within well defined areas or subdivisions, consideration should also be given to the development of specific themes for proposed street names. The proposed street names in the preliminary plat shall be reviewed by the planning commission as provided in Section 41.01 of this Code.

(9) Zoning. Zoning boundary lines if any, proposed uses of property and proposed front yard setback lines.

(10) Public Uses. All parcels of land intended to be dedicated or temporarily reserved for public use, or to be reserved in the deeds for the common use of property owners in the subdivision, with the purpose, condition, or limitations of such reservation indicated.

(11) North point, etc. North point, scale, date, title.

(12) Deed restrictions. Copies of any private restrictions to be included in the deeds should be attached to the preliminary plat. Ord. 3592 11-17-03

(e) A preliminary Stormwater Management, or Erosion and Sediment Control Plan meeting applicable standards of Chapter 68.

42.06 THE FINAL OR RECORD PLAT.

(b) Information to be Shown on Plat. In addition, the plat shall clearly show the following features and information:

(1) Boundary lines. The outside boundary lines shall be correctly designated on the plat and shall show bearings on all straight lines or angles at all angle points, and central angle, radii and arc length for all curves. The outside boundary lines of the plat shall close by latitude and departure with an error not to exceed one foot in 7500.

(2) Recorded Streets. The exact location and the width along the property line of all existing recorded streets intersecting or paralleling the boundaries of the tract.

(3) Bearings, distances. True bearings and distances to nearest established street bounds, patent or other established survey lines, or other official monuments, which monuments shall be located or accurately described on the plat. Any patent or other established survey or corporation lines shall be accurately monument marked and located on the plat, and their names shall be lettered on them.

(4) Monuments. Durable iron monuments shall be set at each angle and curve points on the outside boundary lines of the plat and at all block corners and at all intermediate points on the block lines indicating a change of direction in the lines. The plat shall indicate that the monuments have been set. There shall be shown on the plat all survey and mathematical information and data necessary to locate and retrace all interior and exterior boundary lines appearing thereon.

(5) Layout. The exact layout including:

A. Streets and alley lines, their names, bearings, angles of intersection and widths.

B. The length of all arcs, radii, points of curvature and tangent bearings.

C. All easements and rights of way, when provided for or owned by public services.

D. All lot lines with dimensions in feet and hundredths, and with bearings and angles to minutes if other than right angles to the street and alley lines. Ditto marks shall not be used on the plat for any purpose.

(6) Lots and Block Numbers. Lots numbered in numerical order. In tracts containing more than a block, the blocks shall be numbered in numerical order. In the case of resubdivision of lots in any block, such resubdivided lots shall be designated by their original number prefixed with the term most accurately describing such division, such as: W 1/2 of 3, 40' of 5, etc., or they shall be designated numerically, beginning with the number following the highest lot numbered in the block.

(7) Property Offered for Dedication. The accurate outline of all property which is offered for dedication for public use, and of all property that may be reserved by covenant in the deeds for the common use of the property owners in the subdivisions, with the purpose indicated thereon. All lands dedicated to public use other than streets or roads shall be marked "Dedicated to the Public". Streets and roads not dedicated shall be marked "Private Street".

(8) Watercourses. In case the subdivision is traversed by a watercourse, channel, stream or creek, the prior or present location of such watercourse, channel, stream or creek.

(9) Setback Lines. Setback building lines as fixed by the Zoning Ordinance or the official street map and any other setback lines or street lines established by public authority, and those stipulated in the deed restrictions.

(10) Deed Restrictions. Private restrictions, if any, including boundaries of each type of use restriction; and other private restrictions for each definitely-restricted section of the subdivision.

(11) Name of Subdivision. Name of subdivision and name or number of the larger subdivision or tract of which the tract now subdivided forms a part.

(12) Adjoining Subdivisions, Lakes, etc. Names and locations of adjoining subdivisions and location and ownership of adjoining unsubdivided property. Where provisions are made for access to an adjoining lake or stream, a sketch illustrating such access shall be submitted. The name and adjacent boundary lines of any adjoining platted lands shall be dotted on the plat.

(13) Names of Owners, etc. Names and addresses of the owner of record, the subdivider, and of the surveyor.

(14) North point, etc. North point, scale, date, title.

(15) Statement concerning Lot Area. Statement that any lot transferred will have a minimum width and area substantially the same as those shown on the plat, and that only one principal building will be permitted on any such lot. The area of each lot containing an area of one acre or more shall be shown on the plat.

(16) Affidavits and Certificates. Affidavits and certificates by a registered land surveyor to the effect that he has fully complied with the requirements of this chapter and the subdivision laws of the State of Minnesota surveying, dividing and mapping the land; that the plat is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it; that the plat represents a survey made by him and that all monuments indicated thereon actually exist and their location, size and material are correctly shown.

(17) Owners Certificate. A certificate by the owner of the land in substantially the following form: "As owner I hereby certify that I caused the land described on this plat to be surveyed, divided, mapped and dedicated as represented on this plat." This certificate shall be executed as a conveyance is executed.

(18) Certificate of Taxes Paid. A certificate issued by the authorized city and county officials to the effect that there are no unpaid taxes or unpaid special assessments on any of the lands included in the plat.

(c) A final Stormwater Management or Erosion and Sediment Control Plan meeting applicable standards of Chapter 68.

43.83 Bluff Protection

(J) **Performance Standards – Variances.** Any person who feels that the strict enforcement of any part of this ordinance, would cause practical difficulties, because of circumstances unique to his/her property, may request a variance ~~to the standard~~ from the Board of Adjustment. ~~Any such request may be considered on its own merit, or concurrently with an application for a Land Disturbance Activity Permit, and in accordance with those procedures of Part H of this ordinance.~~ The consideration of a variance request shall be based upon those defined practical difficulties criteria contained in Minnesota Statues, Section 462.357, subd. 6 (2), and any final action of the request shall be supported by findings.

2012 – PROPOSED AMENDMENTS TO SENSITIVE LAND DEVELOPMENT/OTHER CODE SECTIONS

(Sections relate to numbering system of present ordinance.)

Section 1 (Purpose & Intent)
Current: Defines 10 specific goals to be achieved.
Proposed: Eliminates goal listing in favor of language relating to Natural Resource Protection goals/objectives of the Comprehensive Plan.
Rationale: Given reference to Comprehensive Plan goals, specific goal listing is redundant. (City Attorney Opinion) Section is simplified.

Section 2 (Natural State Area (NSA) Established)
Current: Establishes a definition for the term "disturb", and presents two tables that define environments to be set aside as Natural State Areas on plats. In summary, these include:

Table A – Any part of a subdivision that is labeled as a wetland, watercourse floodway, rare plant and animal habitat (as defined in 1996 Winona County Biological Survey), Shoreland corridors, and slopes exceeding grades of 30%.

Table B – If lots within a subdivision exceed "average slopes" of 10%, they are subject to standards of this table, requiring that portions of lots be set aside as NSA. These "portions" are a direct result of average slope. As average slope increases, the ratio of NSA increases. When the average exceeds a threshold of 30%, a lot would not be developable.

This section also contains a definition for the term "average slope".

Proposed: Delete all of current language and replace with:

1. A "revised" listing of protected environments to include:
   A. Delineated Wetlands (per State Wetland Conservation Act Standards/Requirements).
   B. Lands located with a defined Bluff Impact Overlay District (per standards/requirements of Chapter 43, Article XVII, Section 43.81 B. Bluffland Protection Ordinance).
   C. Lands located within 100 feet from a defined special water (per standards/requirements of City Code Chapters 68 (Stormwater Management) and 69 (Shoreland Management).
   D. Other environments who's protection may be mandated by State/Federal law, or environmental study.
2. Once previous environments are established on approved preliminary/final plats, no "Land Disturbance Activity" is permitted. New definition for term "Land Disturbance Activity" is included.

3. Move Sections 4 A and B to Section 2 as "exempted activities" to the Land Disturbance Activity definition.

Rationale: With one exception (rare plant and animal habitats-defined by 1996 MN County Biological Study), the four categories of environments listed, under the proposed amendment, will continue to recognize "current" protection categories, but with support from other code provisions (Stormwater Management, Shoreland, Bluff Protection) that have been adopted following development of the Sensitive Land Ordinance. Given, that standards between these presently vary, a fundamental purpose for amendments is to promote standard consistency by simply mirroring, within the Sensitive Land Ordinance, environments defined in other Code Chapters/Sections. Since proposed language of this Section would simply reference protected environments found under other code provisions, there is no longer a need to define them under the Sensitive Land Ordinance. As such, the majority of this section may simply be deleted (simplified).

Outside of the three specific environments pertaining to Wetlands, Bluffs, and Shoreland buffers, new language would include a "generic" category of "other environments". As catch-all language, this provision would apply to specialty environments that may be deemed worthy of protection as the result of special studies, Federal/State "law", etc. An example of such a "special study" would be the 2008 Alternative Urban Areawide Review (AUAR). As a formally adopted environmental document, development/mitigation strategies of it require:

- The identification and protection of timber rattlesnake, and non tropical bird habitats.
- The protection, through NSA designations, of areas with high/moderate biodiversity significance.

In part, this "other" category will serve to replace the "rare plant and animal habitat" category contained under present language. Ultimately however, new language could serve to protect rare plant and animal habitats, if these are (first) certified through special studies, or required by other laws.

With the previous, changes to Section 2 would include a revised definition for the term "Land Disturbance Activity" that is consistent with that found under Bluff Protection and Stormwater Management Ordinances. Other amendments would serve to restructure language to provide greater clarity, and remove redundancy.

Section 3	(Determination of Maximum Density)
Current:	Permits defined NSA designations to be used in meeting lot area/yard requirements.
Proposed:	Although its intent/purpose is retained, language has been restructured for clarity.
Section 4	(Disturbance of Natural State Areas)
Current:	Presently requires that once established on plats, NSAs may not be disturbed unless approved through a defined process including the Planning Commission – In these cases, Planning Commission would review a request in accordance with "practical difficulty" (variance) standards of MN Statutes 462.357 (subd. 6, 2).
Proposed:	Unless associated with either "exemption" or "exception" categories of the Bluff Protection Ordinance, established NSAs could not be disturbed unless first approved as a variance by the City Board of Adjustment. Under this change, language referencing Planning Commission "approvals" would be deleted.
Rationale:	Per discussion with City Legal Counsel, "variances", permitting NSA disturbances, should be addressed by the Board of Adjustment, rather than Planning Commission.
Section 5	(Transfer of Natural State Areas)
Current:	Provides a process for transferring defined NSAs within a plat if certain thresholds are met.
Proposed:	Delete all.
Rationale:	Section was added a number of years ago to address certain special circumstances resulting from the application of (existing) Table B, Section 2 standards to an area. In practice, the provision has not been popular, and is relatively complex to administer. Additionally, given the proposed deletion of Table B, Section 2, there is no longer a need for this language.
Section 6	(Modification of Natural State Area)
	No change proposed to this section.
Section 7	(Preservation Method)
Current:	Defines acceptable options to be used in promoting the retention of defined NSAs.
Proposed:	Although purpose/intent of this section will not change, minor language changes are proposed to improve clarity.
Section 8	(Review Criteria)
Current:	Section lists several criteria to be used in evaluating a plat including proposed NSA lands.
Proposed:	Delete all.
Rationale:	Given other code provisions relating to those protected environments listed under Section 2, this language is now redundant.

Section 9 (Preliminary Plat Additional Requirements)
Current: Section lists preliminary grading plan information to be included with a preliminary plat.
Proposed: Delete all.
Rationale: Since "present" language was added to the Sensitive Land Ordinance, the City adopted Chapter 68 (Stormwater Management) in 2007. In part, this ordinance defines Stormwater Management requirements for most land activities including typical plats. Present language of the Sensitive Land Ordinance is redundant.

Section 10 (Final Plat Additional Requirements)
All to be deleted – reference previous rationale.

Section 11 (Natural State Areas Field Identification)
No change.

New Section (Natural State Areas – Previous Approval)
Proposed: Section would add language stating that previous NSA approvals would continue to be guided by terms/conditions of initial approvals.

Changes to the following other code sections are proposed as part of amendments to the Sensitive Land Development Ordinance:

- Shoreland Management – 69.04-will be amended to add a section (f), requiring that land within 100 feet from both sides of a "special water" be set aside as an undisturbed buffer. This language would mirror "special water" requirements of the Stormwater Management Ordinance. Although not (presently) included in the Shoreland Ordinance, its proper implementation requires a presence in that ordinance.

  69.02 (g) (definitions). Amendments to the "Bluff" and "Top of Bluff" definition are proposed to bring these in line with City bluff definition.

  69.05 (c) (Shoreland Alterations) – Minor change proposed that would link Shoreland NSAs to the Sensitive Land Ordinance.

- "Weed" definitions of Sensitive Land Ordinance Section 2 (B) and City Code Section 32.03 (Nuisances) to be linked to a revised MN Statute. Former reference was deleted from statute.

- Subdivision Regulations
  42.04 Preliminary Plat Requirements – add a Section (E) that would require the submittal of a required preliminary storm water management plan (meeting Chapter 68 provisions) with a preliminary plat application.

- 42.06 Final Plat Requirements – add a Section (C) requiring the submittal of a final Stormwater Management Plan (meeting Chapter 68 provisions) with a final plat application.

- Bluff Protection Ordinance
  Section 43.83 – Modify section to require that variances be reviewed by Board of Adjustment rather than Planning Commission. Recommended by City legal counsel.