



Memorandum

To Winona County Board of Commissioners

From Brian P. Bender, AICP – Planning Director

Date November 24, 2009

Subject Responses to Ordinance Questions by the County Board

This Memorandum responds to questions the County Board have relating to the revised Zoning Ordinance that did not make the November 18th replies for consideration at the November 24th Work Session. Staff also provided subsequent answers to several County Board questions where the Commissioners sought further explanation.

The question and responses are in order by Ordinance Chapter

Chapter #4 Rules and Definitions

1. Can any references to “he, his, or him” be replaced with a gender neutral “they or them?”

- Yes. There are two methods to replace the masculine references. One option is to do a word search to replace and locate all masculine references

and replace the reference with a gender-neutral alternative that fits the particular usage. The second option is to compose a universal clause and place it at the start of the document that states all masculine references are intended to be inclusive of the feminine and neuter as well.

Subsequent Question

Could you use the "Find/Replace" option or it's equivalent to quickly make the changes? I don't think the disclaimer in the preface of the document is nearly enough. Plus, with today's word processing software, isn't it relatively easy to make the changes?

- Yes. Staff can perform a word search to remove all the masculine references before submitting the final *working draft* to the consultant for formatting.

Chapter #5 Administration

2. Does the Planning Department currently have enough staff to help landowners work with the new Ordinance?

- Yes. The existing staffing levels are sufficient to familiarize landowners with revised Ordinance. Staff expects to initiate an extensive educational campaign (especially at the Township level) as a means to explain the Ordinance to the public.

3. Does the Planning Department currently have enough staff and procedures in place to enforce the Ordinance?

- Yes. Throughout the text, staff improved language to remove ambiguities and added graphics to ease interpretation of various provisions. A better reading document helps to eliminate interpretation discrepancies, thereby reducing potential enforcement actions.

Subsequent Question

I think adding clarity to the language and better graphics will be a big help but isn't that different than actual enforcement? I know prevention and enforcement are linked together but I want to follow up on a question that has come up a couple times during public hearings. Do you have enough staff to adequately enforce the ordinance? Will you be asking for more staff to enforce the protections and rules?

- Yes. There is sufficient staff to implement and enforce the revised Ordinance. The Department has no intentions of submitting a request to the County Administrator for additional staff.

4. *Is it possible to add a clause in the section regarding the Planning Commission Appointments (Page #55, Section #5.2.1)? The clause may have the following language to the Section: **The regular members of the Planning Commission shall be appointed by the County Board Chair after being fully advised by and with the input from the Planning Director and "based on the binding majority vote of the" full County Board.***

- No. Minnesota State Statutes establish the process for making appointments to the Planning Commission. Specifically, Statute #394.30, Subdivision #1 asserts the Planning Commission be composed of not less than five nor more than 11 members appointed by the chair of the board. Accordingly, by Statute, the Chair of the County Board makes the appointment to the Planning Commission.

Subsequent Question

The revised language proposal still has the Board Chair making the appointments, it does not run counter to the state statute. You listed the state statute and it was a shorter description. Since there is no mention of the following clause, "...after being fully advised by and with the input from the Planning Director...", shouldn't that clause also be removed if you follow the logic of the first response? Isn't it a case that we can make an issue set

forth by the state more strict but not less strict? Isn't my addition the same thing as your department's addition of the other clause?

- The difference between the languages is the Ordinance provision, the full Board and the Planning Department have input before the County Board Chair makes the appointment, which is consistent with the statute. Under the version with the amended language, the County Board makes a binding, majority vote which as a binding, majority vote takes away the statutory authority of the Chair to make the appointment.

Chapter #8 Livestock Feedlots

5. Please describe the current restrictions regarding keeping livestock out of streams and how it is enforced?

- The existing ordinance adapts MN Chapter 7020 by reference. Restrictions are enforced through inspection and permitting processes.

Chapter 7020 includes the following restrictions:

7020.2015 LIVESTOCK ACCESS TO WATERS RESTRICTION.

Subpart 1. CAFOs and facilities capable of holding 1,000 or more animal units.

Animals of a CAFO or of a facility capable of holding 1,000 or more animal units must not be allowed to enter waters of the state.

Subp. 2. Non-CAFO animal feedlots.

Except as required in subpart 1, by October 1, 2001, animals of a non-CAFO animal feedlot must be fenced to prohibit entry to, and must not be allowed to enter, a lake classified by the Minnesota Department of Natural Resources as a natural environment lake, recreational development lake, or a general development lake, as defined in part [6120.3000](#).

7020.2005 LOCATION RESTRICTIONS AND EXPANSION LIMITATIONS.

Subpart 1. Location restrictions.

Except as provided in items A and B, a new animal feedlot or a manure storage area must not be constructed within shoreland, a floodplain, 300 feet of a sinkhole, 100 feet of a private well, or 1,000 feet of a community water supply well or other wells serving a public school as defined under Minnesota Statutes, section [120A.05](#), a private school excluding home school sites, or a licensed child care center where the well is vulnerable according to part [4720.5550](#), subpart 2.

- A. An animal feedlot or a manure storage area located in shoreland meeting the requirements of part [7020.0300](#), subpart 15, item B:
 - (1) that has been unused for less than ten years is a pollution hazard and may resume operation after applying for and obtaining an interim permit under part [7020.0405](#), subpart 1, item C; or
 - (2) that has been unused for ten years or more must not resume operation.

B. A new animal feedlot or manure storage area may be constructed within 1,000 feet of a community water supply well or other well serving a public school as defined under Minnesota Statutes, section [120A.05](#), a private school excluding home school sites, or a licensed child care center if the following three conditions are met:

- (1) The Minnesota Department of Health has approved a drinking water supply management area for the well under part [4720.5360](#);
- (2) The animal feedlot or manure storage area is not within the drinking water supply management area; and
- (3) The animal feedlot or manure storage area is not within 200 feet of the well.

Subp. 2. Shoreland expansion limitations.

An existing animal feedlot or manure storage area located in shoreland may not expand to a capacity of 1,000 animal units or more or the manure produced by 1,000 animal units or more. An

existing animal feedlot or a manure storage area expanding in shoreland shall not locate any portion of the expanded animal feedlot or the manure storage area closer to the ordinary high water mark than any existing portion of the animal feedlot or the manure storage area.

Subp. 3. Floodplain expansion limitations.

An existing animal feedlot or a manure storage area located in a floodplain may not expand.

The revised Ordinance (Section #8.2.3) requires compliance with Chapter 7020. Additionally, references regarding livestock and their proximity to water are made in Sections #8.4.3 and #8.5.2 (see below):

Section #8.2.3 Compliance

The use of any land for the establishment, expansion, or management of an animal feedlot shall comply with the provisions of this Ordinance, and the provisions of MN Pollution Control Agency Rules, Chapter 7020.

Section #8.4.3 Shoreland Review Required

Any animal feedlot of ten (10) animal units or less which is located within the Shoreland Zoning District may be reviewed by the County Feedlot Officer to determine if a potential pollution hazard exists. The County Feedlot Officer may place conditions upon the operations of such animal feedlots to limit their impact on surface water quality.

Section #8.5.2 Setbacks

Section #8.5.2.3.i Winter feeding areas shall not be located within one hundred (100) feet of the ordinary high water mark of any perennial stream. Winter feeding area setback requirements may be reduced to fifty (50) feet if a fifty (50) foot permanent non-pastured grass buffer is established in-between the winter feeding area and the perennial stream.

Below is a question that staff was unable to include in the November 18th Memo

In section 8.6.6. (p. 111) there is language regarding the placement of fence posts around sinkholes to protect against manure, pesticide, herbicide, and fertilizer pollution. Could it be clarified to indicate that four permanent fence posts should be placed around the sinkhole at distances of 50 feet down hill and 300 feet uphill? The “other identifiable and visible indicators” should be removed because it is too vague. How many of the current feedlot CUP’s that have had this requirement placed on them since 2005 are abiding by it? Could pictures be shown from at least two farms with different owners where this is being done?

- Adding a foot dimension would clarify specific distances that are intended.

MN Chapter 7020 rules have an outright prohibition of any application of manure and process wastewater within 50 feet (upslope or down-slope) of a sinkhole. MN Chapter 7020 rules allow application of manure between 50 and 300 feet from a sinkhole, but restrict the application on the upslope side (50–300 feet) of a sinkhole by requiring the upslope application to be incorporated within 24 hours for manure or process wastewater applied between 50 and 300 feet upslope of a sinkhole. Additionally, as part of the manure management planning process, feedlot operations are required to identify (on aerial photos/field maps) sinkhole locations and field areas within 300 feet of sinkholes.

If a specific foot dimension is to be included, staff recommends the dimensional distance of 50 feet because most of the feedlot operations that would be required to follow the requirement (Section 8.5.6.l.c) incorporate their manure immediately or within 24 hours, which is allowed between 50 and 300 feet upslope of a sinkhole. Requiring placement of permanent fence posts or some other identifiable and visible indicator at 300 feet on the upslope side of a sinkhole places an unnecessary obstruction in the field to have to work around.

Staff does not concur that that the language "...or some other identifiable and visible indicator..." is too vague and should be removed. The intent of placing fence posts or some other visible indicator around a sinkhole is to serve as a reminder to the feedlot owner, employee of the operation or commercial applicator that there is a sensitive feature (sinkhole) present and identify the manure application setback requirements that needs to be observed. Since the color of fence posts (especially after a couple years of weathering) can easily blend in with the color of crops, crop residue or tilled soil, staff feels it is relevant to allow feedlot owners flexibility in choosing the type of indicator/marker that they feel is best for their operation so that it meets the intent of the requirement and is easily identified/noticed by anyone operating equipment in the field so that the setback requirements are followed and equipment is not damaged by an object (i.e. fence post) that is not easily visible to operators in the field.

The second and third parts of the question are not really relevant to the discussion regarding the language proposed in the draft ordinance and are more related to the compliance status of sites with CUP's that contain the specific condition and picture documentation of compliance with the specific condition. With that said, the following information is still provided in response to the questions posed.

Since 2005, seven sites have Conditional Use Permits that contain a condition requiring marking setback distances from sinkholes in fields that are designated for spreading manure. Of the seven sites:

- One never expanded their operation.
- Three have no open sinkholes in the land application areas where they apply manure.
- One has specifically chosen to not apply manure on fields with open sinkholes. Since they do not designate or apply manure on these fields they have not installed markers around the open sinkholes.
- One was recently approved (CUP approved in 2008 and completed construction in December of 2008). This site was inspected in January of 2009. At that time all the manure was going into their newly constructed

manure storage structure and they were not making any manure applications. At the time of inspection the site owner was fully aware of the condition on his CUP requiring the marking of setback distances from sinkholes and indicated markers would be placed prior to applying manure on fields that had sinkholes. Sites that are over 300 animal units are inspected at least once every three years so the next scheduled inspection this site will occur in 2011 (late in the year) or 2012. Compliance with the condition will be verified at that time.

- One site has open sinkholes within designated areas spreading manure and has placed markers around open sinkholes. An inspection of this site (conducted August of 2009) verified compliance with the CUP permit condition. Picture documentation of compliance with the specific condition is below.



Chapter #10 Zoning Districts

6. Is this the most effective way to protect prime farm land? What are the weak points of this approach?

- Yes. The Ordinance proposal to have minimum lot sizes of 40 and 80–acres respectively in the RC and the ARL Districts, and to accommodate low–density residential development through the conditional use process stems from language directly from the Comprehensive Plan. Again, staff reminds the County Board of this language, as it is the second Implementation Strategy for Agricultural Area (Page #18) – Review the County’s Zoning Ordinance and include additional agricultural zones that

reflect the size of farms, production and location through density controls of one non-farm dwelling per 40, 80 or 160 acres. Also, develop clustering techniques for allowed non-farm dwellings with conditions for deed restrictions on the residual parcel. The authors of the Plan acknowledged the most frequently employed land use control to protect farmland is agricultural zoning.

The proposal is a form of nonexclusive agricultural zoning that attempts to balance farmland protection with controlled (restricted) residential development. The proposal attempts to use the large minimum lot sizes to profitably maintain continuous tracts of farmland as well as discouraging scattered residential development by establishing high prices for cropland for non-farming uses. Staff considers the proposal strikes the correct balance between maintaining the viability of the agricultural diversity found in Winona County while allowing residential development in acceptable densities.

Staff is also assembling a comparison list of twenty-five Minnesota Counties documenting the agricultural zoning measures they enforce.

Subsequent Question

There wasn't an answer in regards to the weak points of the 1/40 and 1/80 approach. Will that come tonight?

- A weak point of the proposal to create two separate agricultural districts simply stems from the public perception of the introduction government restrictions on private property. The proposal is also significantly different from the existing residential density controls in the Agricultural / Natural Resource (A/NR) District to cause apprehension among the public especially among those property owners that acquired 35-acres in a quarter/quarter section.

7. Would crop equivalency ratings or soil types be a better way to protect prime farm land?

- No. The use of soil ratings as a means to regulate residential development is a suitable zoning method in rural areas. However, these methods still employ a minimum lot requirement as a baseline such as 40–acres, and the soil rating enters into the equation when an individual seeks approval to build a residence on less than the required acreage (40–acres). In this analogy, an ordinance would allow the individual to proceed with administrative (staff) approval to build on a five–acre site if the site consists of non–prime farm soils. Otherwise, the individual would need to obtain a variance or special permission to build a residence on a five–acre site. Equally, the same approach could use crop equivalency instead of soil ratings.

8. Are there other equally or more effective alternatives? If so, what are they?

- No. The basic tenant of agricultural zoning is the requirement of large minimum lot sizes. Agricultural zoning with minimum large lot sizes: helps to keep farmland in continuous tracts, discourages the encroachment of non–farm uses in farming areas, avoids farmland from being broken into numerous housing sites, and maintains the value of land for agricultural uses by allowing farmers to purchase or rent acreage at lower prices.

9. How would smaller farmers work within this system? Does this discourage them from buying and farming smaller tracts of land?

- No. The proposal would not inhibit or impede smaller farmers (or any individual or groups) from acquiring smaller tracts for agricultural uses as farmers can attain parcels smaller than the required acreage without zoning approval. The minimum lot sizes only relate to the construction of a residence.

10. *Is it accurate to state that currently a viewshed analysis is a recommendation and not a requirement?*

- No. That is not accurate since Section #11.6.3(8) states: Viewshed analysis shall be employed as an evaluation tool to be considered as part of the decision making process. This means that any CUP required in Section #11.6 would need to have a viewshed analysis completed for the Planning Commission to review in their decision making process.

11. *Mississippi River Corridor: What is currently protected under the current draft for bluff tops?*

- Mississippi River Bluffs (MRB) applies to areas having views of the Mississippi River Valley or is visible from the River as determined by the mapping capabilities of our GIS (in other words – the viewshed analysis). Regulations within this district include a 100-foot setback from the top of the bluff. A Conditional Use Permit is required for development within 300 feet of the top of the bluff as well as for slopes between 12 and 18-percent. The Ordinance prohibits development on slopes exceeding 18-percent. A number of requirements (such as engineered plans) are necessary for a property owner to obtain approval through the CUP process.

12. *What other parts of the County are or are not covered by this same standard? What are the other options that could protect the bluff tops?*

- Mississippi River Bluffs (MRB) is the area stretching along the Mississippi River corridor one mile to the south and west of Highway 61. Section #11.6.1 of the Ordinance regulates the remaining portions of the County and requires the same as the MRB except that there is no CUP required

within 300 feet of the top of the bluff, and the CUP is required to build on slopes of 18 to 25-percent with developments prohibited on slopes exceeding 25-percent. The 100-foot setback from the top of the bluff is for all bluffs in the County as are the additional standards for Conditional Use Permits in Section #11.6.3. The vegetative screening standards also apply to all of the steep slopes and bluffs in the County. There are other combinations of way to help protect and regulate development on bluffs and steep slopes. One way used by neighboring counties is to simply require a setback from the top, toe of the bluff, and prohibit building in between. Another way would be more like some counties in the west that use a viewshed analysis to delineate areas within a specific boundary and then apply regulations.

13. Did the Planning Commission discuss and decide upon a 20-percent standard for bluff slopes during one of their work sessions?

- No. The Planning Commission did discuss the feasibility of changing the percentage standard of bluffs from 25 to 20-percent at a work session, however; there was no agreement for the change. The Planning Commission accepted the 25-percent standard with the knowledge that the development of land having slopes between 18 and 25-percent requires approval through the conditional use process (including the need for an engineering plan set).

14. Are these the highest standards the DNR is currently studying and recommending? Has Bill Huber from the DNR seen the current language and commented on it?

- Both Floodplain and Shoreland are sections of the Ordinance that may have impact on the management of the same land. The purposes of the regulations are different, however, and are derived from different efforts

and concerns. The Floodplain District and related regulations deal with minimizing flood losses by regulating the placement of structures and accessory structures in the floodplain. The regulatory floodplain in Winona County was determined through studies completed in 1983. A key concept in this district is the Regulatory Flood Protection Level which is an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that results from designation of a floodway. When an individual searches the MN DNR website, they are probably looking at the section dealing with Floodplain Management. The Shoreland Overlay District and related regulations purpose is to protect and manage the development of shorelands to insure that the public surface water resources (streams, lakes and wetlands) are protected.

Minnesota DNR has established rules (Minnesota Rules 6120.2500 – 3900) that directs the counties and cities of how to management their shoreland areas. "Shoreland" means 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 a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. Most of our shoreland is along streams because we have no lakes (300 feet from ordinary high water level). However, for the purposes of the Shoreland Rule, the Mississippi River is considered a series of lakes so along the Mississippi River the 1,000-foot Shoreland area applies.

The 2007 Minnesota Legislature directed the DNR to commence rulemaking to update the statewide minimum shoreland development standards. Local government units (counties, cities, and towns) are responsible for the implementation, administration, and enforcement of shoreland management standards through their planning and zoning controls. The last update took place in 1989.

Part of the Shoreland Rules update process has been to revise the Shoreland classification of streams. There are now a number of different

classes of shoreland adjacent to streams and lakes. The designated Shoreland classification determines the minimum setbacks for structures from the ordinary high water mark. According to Minnesota DNR staff, it was really a MN DNR mistake in the 1989 shoreland revision, to classify most shoreland adjacent to trout streams as a *Tributary*, which offers the minimum level of protection in terms of setbacks and performance standards. Coldwater aquatic life including trout need cold, clear water and are most sensitive to habitat degradation, pollution including thermal pollution, etc. Thus, a priority for the MNDNR with their 2007 update to the Shoreland Ordinance was to reclassify the trout streams as *Cold Water Rivers* to offer the most restrictive standards for these type of waters in question.

The Minnesota Department of Natural Resources has designated most streams in Winona County as trout streams. The Minnesota Draft rules would change the classification of all trout stream segments in Shoreland Areas to the new Coldwater classification. The classification change will add restrictions to the property development process.

A Planning Commission member recommended that the County get out in front of the MN DNR Shoreland Rules Update and make the change to the classification now. A letter from a Minnesota DNR staff person supported this idea. When this suggestion came up initially with the Planning Commission, staff indicated that they thought it made more sense to wait until MN DNR published the Statement of Need and Reasonableness (SONAR) and adopted the final rule rather than making the changes prior to the completion of the rule making process. The SONAR would provide the research and evidence that MN DNR used to establish the setbacks for structures in the Coldwater Shoreland Class.

Staff has been in contact with Bill Huber throughout the Ordinance revision process, and has sent Huber a copy of the text, however; he has not had time to provide staff with comments.

15. *Does the current draft incorporate the recommendations made by John Borman at the November 10, 2009 public hearing?*

- John Borman is seeking to expand the number of days the Native American Tribes have to respond to either a Phase One Survey or the Archaeological Assessment from 15-business days to 30-days as described in Section #11.8(5).

Subsequent Question

Was the only revision that John Borman was asking for the change from 15-30 days? Wasn't there one more revision suggestion? I don't think there is another one but I want to double check.

- John Borman also wants to add burial site references to the overall stated purposes of the Ordinance found in Chapter #2. Staff can come up with a statement of purpose for the value of protecting all historic sites and insert the statement at the start of Section #11.8. Staff also can amend the provision to extend the notification period to thirty-days.

16. *What percent of the county land would these requirements apply to?*

- 4.28-percent.

17. *When will the more in-depth and expensive studies be required?*

- Phase One Surveys will be required for development when one-acre of land or more is to be disturbed or for the conversion of agriculture / natural resources uses to residential, commercial, or industrial uses requiring subdivision approval for sites within areas of high archaeology potential.

18. *For smaller projects, what will be the cost to landowners? Is there any way to off set the cost of the studies for smaller landowners on smaller projects?*

- Staff is trying to get an archaeologist from Mississippi Valley Archaeology Center in La Crosse to come and discuss with the Board about cost and cost saving options. Staff has received quotes as low as \$300. There are ways that the County could lower the cost to the private property owner by spending some money upfront to collect information for the whole County that would not then have to be defrayed to each individual property owner by the Cultural Resource Management contractor.

Subsequent Question

If the County was to invest funds upfront to collect information for the whole county in order to save smaller property owners some money, how would that happen and how much might it cost? What might the price range for those services?

- One idea expressed by officials at the Mississippi Valley Archaeology Center (MVAC) in La Crosse was for the County to pay a contractor to go to St. Paul to do a records search for the whole County that would eliminate the need to do a records search for individual projects, and thus remove this expense from the property owner. Staff needs to discuss this option with the MVAC again to work out the details but something like this could cost in the range of \$10,000 up front.

Chapter #12 Wind Energy Conversion Systems

19. Could a more straight forward distance setback be listed in place of the current ratio requirement? For example, something like 1,000 or 1,500 feet from neighbors property lines?

- No. There are multiple ways to establish the setback distance from WECS to property lines and/or neighboring dwellings. By using the 1.5 times method it takes into account the individual height of each WECS. If the

Ordinance employed an immediate 1,000-foot setback, smaller WECS would trigger variances from property lines and/or neighboring dwellings since the smaller WECS are usually located on smaller lots.

Subsequent Question

In terms of set backs to property lines and homes, don't those requirements only kick in for larger WECS? Isn't 100 kilowatts the threshold?

- No. There are setback requirements from property lines, neighboring dwellings, and road right-of-ways for all WECS sizes, however; the Ordinance lists them as a graduated dimension depending on the height of the turbine so that a shorter turbine would have a smaller setback. Staff can compose a larger setback dimension requirement for commercial turbines only, if the Board considers it appropriate such as a setback of 750 feet or 1,000 feet from all commercial WECS to neighboring dwellings.

20. What is the Planning Department's feedback on the suggestions offered by Jim Jarvis after the November 10th County Board public hearing regarding smaller wind turbines? Can we incorporate those suggestions into our ordinance?

- Staff is reviewing the comments Mr. Jarvis made regarding the WECS Chapter. The current draft allows for smaller WECS and they have the title of *Micro WECS*. The WECS Chapter has divided-up the types/heights/output sizes of WECS, and as the WECS get larger, the review process becomes more elaborate (starting from Administrative Approval to the Planning Commission consideration to County Board approval).

Subsequent Question

Will the rest of the responses come tonight?

- Staff responded to the comments provided by Jim Jarvis on a separate Memorandum.

Non-specific Chapter Questions

21. *Does the revised Ordinance have any connection with the Minnesota “Green Acres” program?*

- No. The “Green Acres” is a statewide taxation legislation designed to lessen the valuation of acreage associated with agricultural production. The Ordinance contains no provisions or language relating to taxation or land assessments.

22. *Can an index be created soon to make the document more user friendly?*

- Yes. Staff created a temporary table of contents for the October 19th Draft and will create a table of contents and index for the adopted document.

23. *Can the entire ordinance be placed on the County’s web page to make it more user-friendly? Can key word searches and hot links make it easier to navigate around the document?*

- Yes. The adopted Ordinance will be available online in a digital file format that allows greater navigation around the text. The October 19th Draft as a PDF has the capacity to accommodate key word searches.