

# Clarification of Shoreland Ordinance Language – Common Questions

## **Background**

In the state of Minnesota, shoreland management standards are intended to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of water and related land resources of the state. The City of Independence must adopt an ordinance in compliance with statewide standards for “Management of Shoreland Areas,” Minnesota Regulations Parts 6120.2500 - 6120.3900. The City’s current “Management of Shoreland and Flood Plain Areas” ordinance was adopted in 1992 to address growing development concerns in lakeshore areas, but was not reviewed or approved by the DNR. The current ordinance falls short of minimum state standards in several areas. Adoption of an ordinance which complies with minimum state standards is mandatory, and to ensure compliance, the ordinance must be reviewed and approved by the DNR.

A draft shoreland ordinance was posted on August 22, 2008 which has generated a number of questions relative to specific language in the ordinance, and how changes might affect individual property owners. Many of these common questions and concerns have been discussed with the Minnesota Department of Natural Resources. This document summarizes the outcome of that conversation, and provides clarification on specific text and intent of certain provisions.

It should be noted that this ordinance, once adopted, will be applicable primarily to new development. It would not affect existing developed properties, unless there is a change in ownership or basic use of the property, or in some cases when a permit is required for site changes, at which time the provisions of this ordinance would apply.

## **Proposed Revisions based on Common Questions and Concerns**

### **Section 505.05, Subd. 20 (p. 3)**

The City is investigating a more thorough definition of “intensive vegetation clearing” to make the provisions of Section 505.23 Subd. 2 (Shoreland Alteration, vegetation; p.10-11) easier to consistently enforce. The intent of limiting vegetation clearing is the protection of views from the lake; to maintain a natural appearance by requiring preservation of existing vegetative screening.

### **Section 505.07(a), Water Bodies Included in the Shoreland Overlay District**

Classification of Lake Robina and Lake Irene as Natural Environment (NE) lakes is incorrect. The classification will be revised to Recreational Development (RD), which is consistent with the City’s current shoreland ordinance.

### **Section 505.11 Conditional Uses (p. 5)**

This section lists items that *will* require a conditional use permit under the proposed shoreland ordinance. The language in 505.11(a) will be revised to more clearly introduce this list.

### **Section 505.11 Conditional Uses (p. 6), (a)3(d)**

This section does not meet the current City standards for accessory structures and is proposed to be removed. The provisions found in Section 400.05 of the City Code shall be referenced here, i.e. limiting accessory buildings to a roof area not to exceed 120 square feet.

### **Section 505.13, Subd. 2 Lot Standards (p. 8)**

The “25% maximum lot area covered by impervious surface” is state law and must be applied to most parcels. There may be exceptions made for substandard lots, however the DNR prefers that any perceived hardship caused by the 25% impervious limitation be handled through a variance. The primary purpose of this 25% limitation is

stormwater management. To obtain a variance, the property owner will need to demonstrate that alternative, effective stormwater management measures are in place to mitigate for additional impervious surface.

If the City does not want to address substandard lots through the variance process it should make its case to address the few substandard lots via an exception or conditional use permit. To do so, the city must demonstrate to the DNR the number of parcels that would have a difficult time staying under the 25% threshold, rendering them unbuildable, and what measures will be required to promote stormwater infiltration.

#### **Section 505.13, Subd. 4 Elevation of Lowest Floor (p. 8)**

There has been some confusion with the wording of Item (a)(ii), and the idea that elevation of lowest floor is based on water levels. It should be noted that Item (a)(ii) only comes into effect if Item(a)(i) is not met. First and foremost, elevation of lowest floor is still determined by the FEMA 100-year floodplain elevation, per the City's floodplain ordinance. Only when there is no established floodplain elevation, or the area is not covered by floodplain mapping, would the provision in item (a)(ii) be used. The language and format of this section will be changed to make this distinction clearer.

#### **Section 505.19, Subd. 3(b) Nonconforming Sewage Treatment Systems (p. 9)**

The intent of this section is to require that connections to publicly-owned sewer systems be made and used when available, as addressed in Subd. 1. However, as in other sections, there are allowed exceptions which are described in Subd. 3. To prevent confusion, the DNR has agreed that the first two sentences of item (b) can be deleted. Provisions of existing City Code Section 705 are to be followed.

#### **505.23 Shoreland Alteration, Subd. 1 Road and Parking Areas (p. 10)**

Driveways are included in the definition of roads and parking areas for this setback requirement. However, it is not the DNR's intent to preclude access to private boat launches within 50 feet of ordinary high water level. It will be up to the City to consistently apply boat launch criteria.

#### **505.23 Shoreland Alteration, Subd. 2(a) Alteration of Vegetation (p. 11)**

The City would like to add an exception to part (a) to address invasive species. Intensive vegetation clearing will be allowed for invasive species, such as buckthorn, as defined by the Minnesota DNR. Following any clearing of invasive species, re-vegetation with non-invasive species will be required.

#### **505.23 Shoreland Alteration, Subd. 4(d)7 Placement of riprap and retaining walls (p. 12-13)**

The DNR has agreed that the last sentence of this section, "Riprap and retaining walls used for ornamental purposes only for terracing natural slopes shall be prohibited within the shore impact zone", can be deleted. The intent of this provision is to prohibit the proliferation of retaining walls at and near the lakeshore. The DNR would like to see more naturalized lakeshore areas for water quality and habitat protection. This provision requires the use of natural materials, and ensures that riprap and retaining walls are used only where necessary for erosion control purposes. It generally prohibits the use of retaining walls for ornamental purposes only.

#### **505.23 Shoreland Alteration, Subd. 7 Agriculture and Excavation Standards (p. 13)**

The intent of this provision is to protect the shoreline for water quality purposes. The DNR and City concur that existing properties not in compliance with this standard will not be required to move structures (fences, etc.) that fall within the shore impact zone. If opportunity and /or funding arises to make such changes possible, this would be preferred, but not required. The provisions of this ordinance would apply only to new agricultural activities or structures.