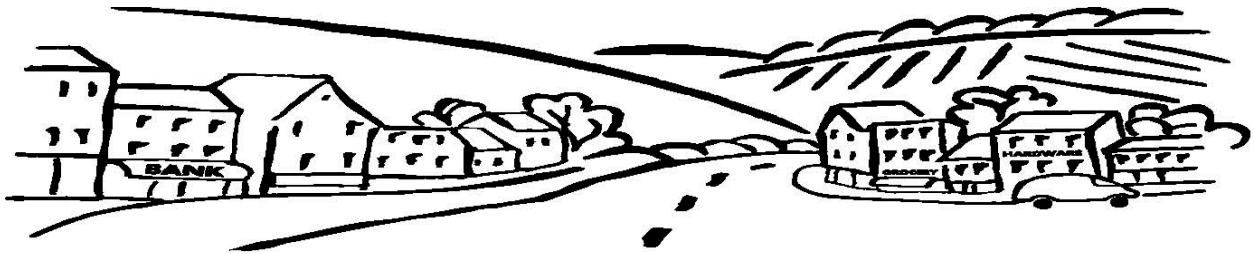


*When a Factory Farm Comes to Town:*

# Protecting Your Township From Unwanted Development



**A guide for Minnesota townships on using an interim ordinance to promote responsible development.**



A Land Stewardship Project Publication  
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[www.landstewardshipproject.org](http://www.landstewardshipproject.org)

***When a Factory Farm Comes to Town:***  
**Protecting Your Township From Unwanted Development**  
**A guide for Minnesota townships on using an interim ordinance to promote responsible development.**

## **Acknowledgements**

This manual is designed for and dedicated to the township officers and residents across Minnesota who envision responsible local development that benefits their community, environment and economy. The interim ordinance and planning and zoning powers described in this manual provide a powerful tool for making those visions a reality and ensuring responsible development and growth in a township.

This manual was the result of the experience and hard work of many people. Lynn Hayes of Farmers' Legal Action Group (FLAG) did the legal research for the first and second editions of this manual. Over the years, FLAG has also provided critical legal research and assistance for the Land Stewardship Project's work to protect and enhance township rights.

Nancy Barsness, Clerk of New Prairie Township in Pope County, Minn., reviewed the original manual for clarity and accuracy. Nancy's contributions to protecting township rights and helping townships effectively use planning and zoning deserves special recognition. Through trainings, organizing meetings and legal battles, Nancy has been one of the most effective advocates for township rights in Minnesota.



**This is the latest version of a publication that was originally published in February 1997 and updated with a second edition in August 2006.**

Copies of this publication are available from the Land Stewardship Project: 821 E. 35<sup>th</sup> St., Suite 200, Minneapolis, MN 55407; phone: 612-722-6377; e-mail: [info@landstewardshipproject.org](mailto:info@landstewardshipproject.org). This publication is available online at [www.landstewardshipproject.org](http://www.landstewardshipproject.org).


## Help Protect our Township Rights: Join the Land Stewardship Project

The powers of local control described in this manual are granted by the State of Minnesota. While we often think of them as inherent, they are not. In Iowa, township and county local control of factory farms has been eliminated. In Wisconsin, these rights have been severely restricted. In Minnesota, these rights are perpetually under attack from special interests. The best way to protect these rights is to use them. Attempts by corporate interests—corporate ag interests in particular—to weaken township zoning powers have failed, in part, because of the hundreds of township officers and residents who have used these rights and who speak up when they are attacked.

Protecting these rights has been and will continue to be a priority for the Land Stewardship Project. Our strength is through our membership of farmers, township officers, residents and others concerned about Minnesota’s rural communities. Please, consider joining:

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# I. Introduction

## A. Why this guide was created & how to use it

Many townships in Minnesota are dealing with the negative effects of large-scale feedlots. The size of these operations makes them more *industrial* than *agricultural*, and their negative consequences for the environment, human health, property values and family farms have been well documented by scientific studies. In addition, county and state officials have sometimes proven to be unsympathetic to the concerns of township residents.

But local residents and township officials can chart their own course as a community and control unwanted development, including factory farms, on the township level. Minnesota laws give townships the authority to control land use in their township through comprehensive planning and zoning. In fact, townships have planning and zoning powers as powerful as that of cities. This guide outlines how townships can use planning and zoning and an interim ordinance to begin the process of controlling unwanted developments such as large-scale livestock operations.

While it is not mandatory for townships to use their planning and zoning authority, it is a useful tool and allows townships to control local development in a way that protects the health,

safety and welfare of citizens. As part of its planning and zoning authority, a township can declare a moratorium on certain types of developments, including large-scale feedlots, for at least one year—and in some cases, such a moratorium may be extended for an additional year—while the township is engaged in a planning and zoning process.

***Because of the purpose of an interim ordinance and how the laws are written, a township should not pass an interim ordinance if it is not sincere about studying the need for creating or amending a comprehensive plan or zoning ordinance.***

This guide uses the term “large-scale feedlot” to mean one that is 500 animal units in size or larger. In Minnesota, 500 animal units is the equivalent of about 100,000 chickens, 1,666 swine, 500 beef cattle and 355 mature dairy cows. “Animal units” are defined by the Legislature and state rules and used for permitting and regulatory purposes. (See Appendix G on page 62 for more information about animal units and the size of farms in Minnesota.) This guide is written for township residents and town board members. This guide focuses on what town board members

### **What is an interim ordinance?**

An interim ordinance allows a township to put a temporary ban or moratorium for up to a year on major development while the township considers adopting or amending a comprehensive plan and zoning ordinances. In effect, an interim ordinance calls a “timeout” so the township can take stock and assess what, if any, local controls are needed to protect the character of the township and quality-of-life of township residents. Without this timeout, developers could rush to receive permits and start building in anticipation of the township adopting an ordinance that prohibits or limits the type of development they want to do. Interim ordinances are a long-established and necessary tool for orderly and thoughtful development of a comprehensive plan and zoning ordinances.

attorney or a planning and zoning consultant, or both. ***It is not a manual on how to write a comprehensive plan or zoning ordinances.***

***None of the information contained in this guide is intended as legal advice for any***

***particular township.*** A well-written comprehensive plan and zoning ordinance can save a township money in the long run; paying for good advice is a good use of township funds.

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## **B. Things to consider in using comprehensive planning & the interim ordinance to control large-scale feedlots**

Township planning and related zoning controls are some of the most effective tools in Minnesota today for controlling undesirable developments such as large-scale feedlots. Many Minnesota townships have adopted interim ordinances, comprehensive plans and zoning ordinances to control controversial developments. It is up to the residents, organizers, and town board members to make sure the town board makes effective use of its planning and development authority.

✓ **Act early.** Once township residents or officials have decided that large-scale feedlots or other controversial developments are an issue that needs to be addressed by their township, they should begin the planning process right away, and should adopt an interim ordinance to protect the process. The planning process is much easier to conduct when the township is not under pressure from a developer who is trying to proceed with construction of a large-scale feedlot. However, townships frequently discover the need to create or amend their plans or zoning ordinances after large-scale feedlots (or other controversial developments) have applied for or have received permits. In either case, township residents and officials should act as soon as they know that existing or potential developments are an issue for their township.

✓ **Keep a well-documented record.** A comprehensive plan is both a process and a product. If a township's comprehensive plan, zoning ordinance or interim ordinance undergoes judicial review, the court will look at the documents used in creating the plan and ordinances, as well as the actual plan and ordinances. Township officials should make sure the decisions they make throughout the planning process are well-documented.

✓ **Do not be intimidated by threats of lawsuits.** Developers who may be affected by an interim ordinance will sometimes threaten to sue the townships. Township officials should not let a fear of being sued be a reason for not using their authority to use planning and zoning tools, including the interim ordinance. It is true that they are legal tools which bear legal risks and rewards. Using them properly will minimize the risks (e.g., lawsuits) and maximize the rewards (e.g., control over the township's development). Proper use of the township's authority includes using a good faith process. Working with an attorney and a planning and zoning consultant is highly recommended and may reduce the likelihood of legal challenges. Courts have generally ruled in favor of townships that have used a careful and well-documented process when adopting local ordinances. The township should have insurance that covers its defense if sued.

✓ **Public notice and a public hearing are REQUIRED by state law before passing an interim ordinance that impacts feedlots.** In 2005, then-Governor Tim Pawlenty signed a bill into law that requires a township to hold a public hearing for proposed interim ordinances that impact feedlots. The public hearing is *required* to have a 10-day notice, given by publication in a newspaper. See the sidebar to the right for the specific statute.

**Minnesota Statutes 462.355 Subd. 4b  
Interim Ordinance**

If a proposed interim ordinance purports to regulate, restrict, or prohibit activities relating to livestock production, a public hearing must be held following a 10-day notice given by publication in a newspaper of general circulation in the municipality before the interim ordinance takes effect.

---

## C. Understand the permit process that a large-scale feedlot must follow

Feedlot permit activity is one way of monitoring whether new or expanding feedlots are being developed. This section offers background on how to monitor feedlot permits. No matter what the current state of permit activity, once a township has decided that issues related to large-scale feedlots are important to the township, the town board should begin the planning process.

✓ **Public notice requirements for large-scale feedlot permit applications.** There are

minimum state requirements for providing public notice that a permit for a large-scale livestock operation over 500 animal units has been applied for. The township must be notified by a first-class letter to the clerk 20 business days before a permit can be issued. Neighbors within 5,000 feet must also be notified through the mail or via a notice in a local newspaper 20 business days before a permit can be issued (*Minnesota Statutes 116.07 Subd. 7a*; see box below).

**Minnesota Statutes 116.07 Subd. 7a**

**Notice of application for livestock feedlot permit**

(a) A person who applies to the Pollution Control Agency or a county board for a permit to construct or expand a feedlot with a capacity of 500 animal units or more shall, not less than 20 business days before the date on which a permit is issued, provide notice to each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot. The notice may be delivered by first class mail, in person, or by the publication in a newspaper of general circulation within the affected area and must include information on the type of livestock and the proposed capacity of the feedlot. Notification under this subdivision is satisfied under an equal or greater notification requirement of a county or town permit process. A person must also send a copy of the notice by first class mail to the clerk of the town in which the feedlot is proposed not less than 20 business days before the date on which a permit is issued.

(b) The agency or a county board must verify that notice was provided as required under paragraph (a) prior to issuing a permit.

✓ **State feedlot permits.** The Minnesota Pollution Control Agency (MPCA) regulates animal feedlot pollution. The MPCA regulates feedlots under Chapter 7020 of Minnesota rules, often referred to as the 7020 rules. These rules govern the storage, transportation, disposal and utilization of manure. Most feedlots under 300 animal units do not require permits from the MPCA, although they are required to be registered with the state. For feedlots over 300 animal units, one of the three following permits explained below is required.

✓ **Construction Short-Form.** Construction Short-Forms are generally required for the construction or expansion of animal feedlots and manure storage areas between 300 and 999 animal units. This permit does not require a public hearing and there is no official opportunity for public comment. If the proposer meets the rule requirements, then the permit is granted. Often, these permits are issued by the county feedlot officer and are best tracked through that office. The application should be made available upon request.

✓ **National Pollutant Discharge Elimination System (NPDES) & State Disposal System (SDS) permits.** If a feedlot over 1,000 animal units discharges to U.S. waters, the owner is required to obtain an NPDES permit. If the feedlot has over 1,000 animal units and does not discharge to U.S. waters, owners are

required to obtain a SDS permit, but may opt for an NPDES permit instead. Most owners of feedlots over 1,000 animal units opt for a NPDES permit, even it is not required, due to the benefits for the owner described in the next paragraph.

NPDES permits allow the owner to qualify for an agricultural storm water exemption within federal law for any discharges related to land application activities, if the owner complies with the requirements of the permit. NPDES permits also protect the owner from citizen lawsuits under the Clean Water Act, again, if the owner complies with the requirements of the permit. NPDES permits also authorize discharge during extreme or chronic rainfall.

Both NPDES and SDS permits require 30-day public notice prior to issuance and major modifications and 30-day public notice for substantial changes to a manure management plan (MMP). The MPCA maintains a web page of all livestock facilities that have applied for coverage under NPDES or SDS permits. The public notice and respective draft permit can be found there. Included in the draft permit is the county, name of the feedlot, township, section, animal type, animal numbers, total animal units, date the permit application was received, and the issuance date of the permit. The list is kept up-to-date and facilities remain on the list for approximately 30 days after the permit is granted. See the box below for information on how to find the list.

### Who has applied?

Information about who has applied for SDS or NPDES permits is online at:

<https://www.pca.state.mn.us/public-notices>.

In addition, the MPCA maintains a feedlot helpline at 1-877-333-3508.

To view all feedlots registered in the state of Minnesota, download the CSV file at:

<https://gisdata.mn.gov/dataset/env-feedlots>. This will download a large Excel file listing each registered feedlot in Minnesota.



✓ **Interim Permit.** Interim permits are required for feedlots under 1,000 animal units that are identified by MPCA staff or the county feedlot officer as a pollution hazard, and are issued to address such pollution hazards. A feedlot does not require these permits if it has applied for a NPDES or SDS permit.

✓ **County conditional use permits.** Many counties require conditional use permits for feedlots after they reach a certain size. These are land use permits that counties require and issue through their planning and zoning powers. As an example, in Winona County, feedlots over 300 animal units are required to get a conditional use permit. This permit is in addition to the feedlot permit and requires review by the county board. The county can approve the permit as applied for, deny it, or approve it with conditions. Possible conditions could include requiring a specific type of odor reduction technology, moving the location further from neighbors, or limiting the size of the manure lagoon.

Counties have very broad discretion in granting or denying conditional use permits. The county must have a valid reason for denial and these reasons should be documented as part of the decision-making process. The county zoning ordinance will spell out the criteria to be considered when granting these conditional use permits. Often, these criteria include consideration of the proposed use's impact on "property values" and "quality of life." These criteria can be used to add conditions or deny a permit.

The rules for granting conditional use permits vary from county-to-county, but in all cases by state law at least one public hearing is required before the conditional use permit can be granted. Call your county zoning administrator to get the rules for your county. It is a good idea for the township to have a

complete copy of the county's comprehensive plan and zoning ordinances.

✓ **Environmental Review.** New feedlots over 1,000 animal units or existing feedlots expanding by more than 1,000 units must undergo an Environmental Assessment Worksheet (EAW). Once completed, the EAW has a 30-day public comment period. Comments are sent to the MPCA and the MPCA is required to respond. If a project has "the potential for significant environmental effects" (Minnesota Administrative Rules 4410.1700 Subpart 1), an in-depth environmental review, or an Environmental Impact Statement (EIS), is necessary, although very rarely completed by the state. No permits can be issued until the environmental review process is completed. A list of all projects, including feedlots, undergoing an EAW is on the MPCA's website at: [www.pca.state.mn.us/quick-links/projects-under-mpca-review](http://www.pca.state.mn.us/quick-links/projects-under-mpca-review).

The Environmental Quality Board (EQB) oversees the rules governing environmental review and has some helpful guidance on this process. The guidelines are available online at: [www.eqb.state.mn.us/content/environmental-review-guidance-citizens](http://www.eqb.state.mn.us/content/environmental-review-guidance-citizens).

✓ **If a proposed large-scale feedlot concerns you, get a copy of the state and county permit applications.** If you are interested in a particular feedlot proposal, get a copy of the feedlot permit application, the conditional use permit application and related documents. Most of these documents are at the county planning and zoning office. You may also need to check with the MPCA for NPDES/SDS Permit applications. Per state law, this is public information and should be made available to you.

## D. Science & experience demonstrate the negative impacts of large-scale feedlots

One of the major reasons townships want to control the development of large-scale livestock facilities is because their waste production can rival small cities in terms of volume. These operations rely on waste management facilities that accumulate millions of gallons of manure in concrete pits, fiberglass tanks or earthen lagoons. This manure is stored in liquid form until it is pumped out and applied to land. The storage facilities are designed to be large enough to store as much as a year's worth of manure. When it is pumped out, the manure is either spread on the surface of crop fields, or "knifed" in using tillage equipment that places the manure beneath the soil surface.

As numerous scientific studies have documented, the handling, storage and disposal of such massive amounts of manure carries with it many inherent problems for the local environment and community.

### Effects on Human Health

Liquid manure lagoons not only produce odors, they also emit hundreds of compounds, including acids, alcohols, aldehydes, amides, amines, aromatics, esters, ethers, nitrogen-containing compounds, steroids and sulfur-containing compounds.<sup>1</sup> Neighbors of large-scale hog confinement operations report higher rates of respiratory problems.<sup>2, 3, 4, 5, 6, 7, 8, 9</sup>

Antibiotic-resistant bacteria is a major concern among health care professionals and scientists. Overprescribing drugs in hospitals and doctors' offices is one culprit. But there is evidence that large-scale confinement agriculture is helping to produce superbugs through its massive use of subtherapeutic antibiotics.<sup>10, 11</sup>

### Effects on the Environment

Large-scale confinement operations can pose major threats to lakes, rivers, streams, and even underground aquifers. Large-scale livestock operations are one major reason agriculture is the leading cause of nonpoint source water pollution in the United States. Animal waste is the largest contributor to pollution in at least 60 percent of the rivers and streams classified as "impaired" by the Environmental Protection Agency (EPA).<sup>12</sup>

### Effects on Property Values

Large consolidated feedlots can have an effect on neighboring land value. Research has shown the closer a home or property is to a feedlot, and the nicer that property or home is, the more the value of that property or home will decrease. Research has shown that there can be anywhere from a 50 percent to 90 percent decrease in value if the property is located near a large-scale feedlot.<sup>13 14, 15, 16</sup>

### List of Concerns

When outside investors proposed a 3,000 animal-unit dairy operation in Dodge County's Ripley Township, residents did research and came up with a list of concerns: Large-scale livestock operations...

- ✓ Haven been proven to drastically decrease surrounding property values.
- ✓ Have helped make agriculture one of the largest sources of water pollution in the country.
- ✓ Damage community roads and make them costly to maintain.
- ✓ Tend not to buy local and don't contribute to good rural development.
- ✓ Emit toxic air emissions and odors that impact the health and quality of life of nearby residents.

## E. Livestock farming that benefits family farmers, the environment and rural communities

Livestock farming is a key economic engine in rural Minnesota. Often, supporters of large-scale animal production argue that the only way farming can be economically competitive is if animals are concentrated in large numbers on industrialized operations. Townships that propose to limit the growth of such facilities, say the supporters of large-scale industrial agriculture, are anti-agriculture.

This is not true. In Minnesota, dairy, beef and sheep operations are overwhelmingly moderately-sized family owned and run operations. While not as numerous as they once were, there are still small- and moderate-sized hog operations operating profitably throughout the state. (See Appendix G on page 58 for the size of livestock operations in Minnesota.)

What we know is that as livestock operations get larger and larger, rural communities become less populous and less of the money generated by these operations stays in the community, compared with small- and moderately-sized livestock farms. LSP has worked for decades to promote a family farm-based system of sustainable agriculture that includes livestock. In fact, we know that a sustainable system of agriculture must include livestock.

We work to achieve these goals through many different means:

- In 2004, the Land Stewardship Project joined with three other farm organizations in creating the “Citizen Task Force on Livestock Farmers and Rural Communities.” This task force created a report that outlined how the state can promote more livestock

on family farms while respecting local democracy and the rural environment. This report outlines how family farm-based livestock operations are necessary for healthy rural communities and integral to a sustainable form of agriculture. This report can be found on our website.

- LSP advocates for state and federal policies that promote sustainable, family farm-based livestock operations. This includes passage of the federal Conservation Stewardship Program, which acknowledges and rewards the many benefits that small- and moderately-sized livestock operations can have on the environment.
- LSP’s Farm Beginnings Program helps new farmers get started in various agricultural enterprises, including those involving livestock. This program includes field days and ongoing mentorship, and is grounded in the understanding that for rural communities to prosper we need more younger farmers on the land.
- LSP has been a leader in promoting managed rotational grazing in Minnesota as a low-input system of raising livestock that is beneficial to the environment and profitable for farmers. We have focused work on this in the Chippewa River watershed, where we are demonstrating the positive impacts well-managed pastures can have on water quality.

## F. Frac Sand Mining and Township Rights

Like factory farms, frac sand mines and facilities are high-impact, industrial operations often proposed to be located in rural communities, frequently by outside corporate interests and with little warning for local residents. During the past several years, many local governments, including townships (especially in southeastern Minnesota), have used their interim ordinance powers to address this issue and protect their communities' best interests.

### What is frac sand mining?

The oil and gas industry uses enormous quantities of sand in the hydraulic fracturing, or fracking, process. This sand is known as a "proppant" because it holds cracks made in shale rock open so that oil or gas can be extracted. The silica sand found in some areas of Minnesota is particularly desirable to the industry for this purpose because it is very round and hard. Only sand that meets certain specifications is usable for fracking.

Frac sand mines may be hundreds of acres in size, and typically require stripping the land of any trees, plants, topsoil, rock and other material to access sand layers below. To be used by the oil and gas industry, frac sand must not only be mined, but also processed and then shipped to fracking sites in other states. Frac sand processing (including washing and drying) plants, as well as rail, barge and truck shipping facilities, are also industrial operations with significant adverse impacts on the communities where they are located.

### What are some of the reasons for concern?

- ✓ Frac sand operations represent a risk to **water quality**. The act of industrial mining, especially in karst areas where water systems are already vulnerable, opens up new potential pathways for groundwater pollution. Chemicals known as "flocculants," used in processing frac sand, may contaminate groundwater. Some frac sand mining proposals involve returning waste material, contaminated with processing chemicals, to the mine site and leaving it there. At several sites in Wisconsin, wastewater has overflowed from frac sand mines and contaminated nearby surface waters and neighboring properties.
- ✓ Frac sand operations are an **air quality** concern for local residents. When silica sand is crushed, as occurs during frac sand operations, silica dust is generated. Silica dust is a known health hazard, contributing to many serious conditions, including silicosis and lung cancer. The dangers of silica dust in occupational settings, including at fracking sites where frac sand is used, are well known. The extent of the risks of silica dust exposure for neighbors of frac sand operations has not been adequately studied.
- ✓ Frac sand operations generate intensive, heavy truck traffic, threatening **road safety and infrastructure**. A fully-loaded frac sand semi-truck can carry 25 tons of sand and weighs 40 tons total. Because the oil and gas industry uses the sand in immense quantities, frac sand proposals often include hundreds of truck trips, per mine, per day, transporting sand to processing and/or shipping locations and then returning to the mine. Rural roads, especially township roads, are rarely designed to handle this level of activity. Frac sand truck traffic threatens the safety of other road users in rural communities, including walkers, runners, bikers, horseback riders, Amish community members, and farmers driving equipment. It also wears out roads and bridges far more quickly than their ordinary lifespan, at a major cost to the community.
- ✓ Frac sand operations are not compatible with **agriculture**. Because of the extreme disturbance to the soil, it is highly difficult for land on which frac sand mining has taken place to be returned to productive agricultural use. The risks of harm to water and air quality from frac sand operations affect livestock being raised in the area, as well as humans.

- ✓ In addition to direct health and safety concerns, frac sand operations threaten the **quality-of-life** of rural residents. Frac sand mines, processing plants, shipping facilities, and truck traffic generate noise and light pollution that can eliminate the very reasons many residents value living in rural areas. Frac sand operations cause the rapid industrialization of a rural area and the loss of its rural character.
- ✓ Frac sand mining irrevocably alters the **landscape** where it takes place, diminishing natural beauty and the health of ecosystems. Frac sand is often found within hills or bluffs, which are either taken down completely or drastically reduced in size to remove the sand. Neither farmland, nor woodlands or other wildlife habitat, can be restored to its previous condition after mining. Even when mining companies follow through on their commitments to “reclaim” the land post-mining (which does not always occur), it is impossible to truly restore what has been lost.
- ✓ Frac sand operations threaten the stability of local **economies**. Like most mining, the frac sand industry exists on a dramatic “boom and bust” cycle, in which demand for sand fluctuates greatly following fluctuations within the global oil and gas industry. Mines and plants may close shortly after opening or be dormant and functionally abandoned for long periods of time. Frac sand operations can harm and displace more permanent local industries that are dependent on a healthy landscape, such as agriculture and tourism, while not replacing them with any sustained economic benefit.

#### **What can townships do?**

When faced with proposed frac sand operations in the township, or the possibility of them, townships have the right to use their interim ordinance powers to take time to study the issue and determine how best to address it. Several Minnesota townships have done so. (Five counties in southeastern Minnesota also used their interim ordinance powers to place a moratorium on frac sand operations in 2011-2012.) Following a necessary period of study, townships have chosen a variety of ways to address frac sand operations, including banning, restricting or regulating them. For example, Florence Township in Goodhue County has banned frac sand operations, along with all other industrial mineral operations. Hay Creek Township in Goodhue County has chosen not to allow any large-scale commercial mining operations (defined based on acreage being mined), the use of more than 50 round-trip truck trips per day, and other characteristics which would include virtually all frac sand operations.

In many communities, the frac sand industry has argued that it is impossible to ban or significantly restrict frac sand operations because they are no different from other mining operations already existing in rural areas. This claim is not accurate. Frac sand is an industrial mineral produced through industrial mining and processing, and frac sand operations can be differentiated from other types of mining in a township’s moratorium or ordinance. The nature and impacts of the activity required to produce frac sand are very different from the mining of, for example, sand used in construction projects or rock used for township roads. Frac sand operations are intensive activities that involve the daily extraction of mass quantities of sand and the transport of it to processing or shipping sites, continually using the same route, with significant impacts on neighboring residents.

**In Appendix D on page 50, there is a copy of the interim ordinance and moratorium on industrial mineral operations passed by Yucatan Township, in Houston County, in September 2012.** It provides one example of how industrial mineral mining, such as frac sand mining, can be distinguished from other mining activity.

Additional resources can be found in Appendix F on page 61.

## II. Overview of Comprehensive Planning

### A. Townships have authority to do comprehensive planning and zoning and to protect that process with the interim ordinance

In the mid-1960s, the Minnesota Legislature passed the statute entitled, “Municipal Planning” (Minnesota Statute sections 462.351 to 462.364, see Appendix B on page 29) to give municipalities the powers and a uniform procedure for planning for the future development of land. In the mid-1980s, the Minnesota Legislature included townships in the definition of “municipality” used in section 462, thereby giving townships the same zoning authority as cities. *Minnesota Statutes* section 462.351 names three areas in which a township can use its authority:

- ✓ To insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities;
- ✓ To preserve agricultural and other open lands, and
- ✓ To promote the public health, safety and general welfare.

An understanding of the comprehensive planning process can help prepare township officials for writing a strong interim ordinance. A well-planned and well-written interim ordinance will give a township maximum protection for completing a comprehensive plan and zoning ordinance.

A comprehensive plan is defined in statute as: *“a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality and its environs, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, including proposed densities for development, a community facilities plan, a transportation plan, and recommendations*

*for plan execution. A comprehensive plan represents the planning agency's recommendations for the future development of the community.” (Minnesota Statutes section 462.352, subd. 5)*

A comprehensive plan should provide policies and guidelines for evaluating different types of development. Official controls are the specific zoning ordinances and regulation for implementing the comprehensive plan. A township should adopt a comprehensive plan before adopting or amending a zoning ordinance.

The process for writing a comprehensive plan and zoning ordinance involves studies, public hearings and consultations with attorneys, as well as planning and zoning consultants. The purpose of the interim ordinance is to limit development while the community undergoes this process. Studies help the town board and township residents consider the township’s overall development issues and identify the types of land use they want to protect for the public welfare of township citizens. Public hearings keep the planning process open and inclusive by communicating the board’s findings and by getting input from residents and experts.

Writing a comprehensive plan and zoning ordinances requires the expertise of a planner who has experience with comprehensive planning and zoning, and an attorney who knows township law, and preferably, feedlot issues. An attorney can help with legal issues such as interpreting the law, jurisdiction, documentation and proper meeting notice. Planners can help design a process for developing land use goals and a plan for meeting them.

## B. Protect the planning process with the interim ordinance

The authority to enact the interim ordinance is part of the township's overall planning authority. The interim ordinance can act as a moratorium on developments that may interfere with the planning process. *Minnesota Statutes* section 462.355, subdivision 4 (see Appendix B, page 29), authorizes a township to adopt an interim ordinance, "for the purpose of protecting the planning process and the health, safety and welfare of its citizens." In effect, the interim ordinance is a time-out which gives the town board time to conduct its planning process slowly and methodically without having to rush into poorly informed decisions. Section III of this guide is devoted to the interim ordinance. Specifically, state law gives townships the authority to pass interim ordinances to protect the planning process in five described scenarios.

- ✓ The township is conducting a study for the purpose of adopting or amending a comprehensive plan or official controls (zoning ordinances, regulations, official maps, etc.);
- ✓ The township has authorized a study to be conducted;
- ✓ The township has held a hearing to consider adopting or amending a comprehensive plan or official controls (zoning ordinances, regulation, etc.);
- ✓ The township has scheduled a hearing to consider adopting or amending a comprehensive plan or zoning ordinances and regulations, or;
- ✓ New territory for which plans have not been adopted is annexed to the township.

(*Minnesota Statutes* section 462.355 subd. 4)

This guide uses the first two planning scenarios regarding a study as examples, and any one of them may fit a particular township's circumstances.

Township supervisors should be sincere about starting a planning and zoning process before they adopt the interim ordinance, and they must attempt to do whatever activity the interim ordinance cites regarding the planning and zoning process. The decision to start planning and zoning should happen *before* the interim ordinance is passed. Activity regarding planning and zoning should begin soon after the interim ordinance is adopted. If at some point the township's decisions are challenged, a court will probably review the documented record for evidence of the town board's sincerity in following through on the actions cited in the interim ordinance. Operating in good faith could be critical in a court challenge.

The content and depth of studies may vary from township-to-township and should match the individual township's needs. One township may appoint local residents to study what other townships have done with large-scale livestock facilities. Another township may hire legal and planning expertise to conduct a more in-depth study to begin a comprehensive plan that covers existing development patterns, existing and potential land use conflicts, adequacy of public services, etc., in addition to large-scale feedlot issues in general. Yet another township may study how well its existing comprehensive plan or zoning ordinance will control large-scale feedlot developments.

The initial interim ordinance can be effective for one year, or until a comprehensive plan and related zoning controls have been adopted, whichever comes first. If the township was starting from scratch and had no comprehensive plan or

zoning in place when the interim ordinance was adopted, the township can extend the interim ordinance for another year.

(*Minnesota Statutes* section 462.355 subd.

4(c).) The length of the extension should match the workload before the board.

Township supervisors may extend the interim ordinance in one vote, or they may make

shorter, more frequent extensions as necessary. The extension of the moratorium requires a public hearing that must happen at least 15 days before the expiration of the interim ordinance, but not more than 30 days. Notice must be published at least 10 days before the hearing.

### **Minnesota Law Library**

Many Minnesota towns, cities and counties have made some or all of their local laws available online. To access this “library” of Minnesota ordinances, go to the Minnesota Law Library at <https://mn.gov/law-library/research-links/ordinances.jsp>.



## III. The Interim Ordinance

### A. What town board supervisors should do to pass an interim ordinance

Previously, we described the purpose of the comprehensive plan and zoning ordinance in controlling local development, and the purpose of the interim ordinance in protecting that planning and zoning process. This section focuses on the interim ordinance specifically and offers guidelines and strategies for using this tool. Township residents and township supervisors have some distinct, as well as overlapping, roles in passing an interim ordinance. Some steps outlined in the sections below are required by law and must be done by township officials. Other steps are recommendations based on the experience of other townships and can be done by township residents or township supervisors, depending on the township's situation.

On the following pages are the major steps involved for township supervisors in adopting an interim ordinance that impacts feedlots. While it is important for township supervisors to understand the process thoroughly, it is strongly advised that once the township begins serious consideration of commencing the planning and adopting an interim ordinance, that the township retain and work with an experienced attorney.

#### **Steps involved in adopting an interim ordinance that impacts feedlots:**

1. Assess the township's situation.
2. Create a well-documented public record of the need for an interim ordinance.
3. Develop a strategy for creating and using the interim ordinance.
4. Write the draft interim ordinance.
5. Hold a public hearing with *at least* 10 days public notice (required for interim ordinances that impact feedlots).

6. Adopt the interim ordinance.
7. Establish and begin the process for studying comprehensive planning and zoning.

#### **1. Assess the township's situation.** Here are some questions to consider:

- ✓ Does the township have a comprehensive plan or zoning ordinance, or both? (The town clerk should have copies.) If yes, does the zoning ordinance provide adequate control of large-scale feedlots or other controversial developments? If no, has the town board ever discussed the need for planning and zoning in general, or to control specific types of development?
- ✓ Are feedlot permit applications pending? Have large-scale feedlots been built in the township? This information is important for conducting a thorough planning process. However, township leaders should not let permit activity or the presence of large-scale feedlots discourage or delay the township's planning process. A well-written comprehensive plan and zoning ordinance can control future feedlot development such as the expansion of existing facilities and the construction of new facilities.
- ✓ Does the township face other land use issues, such as housing developments, frac sand mines, mobile home parks, junkyards, or gravel pits?

#### **2. Create a well-documented public record on the need for an interim ordinance.** A documented record provides evidence to a

court that the town's process was procedurally correct; thus, the documented record should show what decisions the township officers made, how they were made, and on what information their decisions were based. Keeping a thoroughly documented record may be key to winning a legal challenge. The town clerk should take minutes of all board meetings and hearings, and should maintain all documents (including handouts, etc.) used during the meetings as part of the records of the meeting. The minutes should fairly characterize discussions and actions that take place in town board meetings.

Audio or video recording of town board meetings is not commonly practiced but is an option for township officials to consider in addition to the written minutes. Some attorneys and consultants believe that a recording of a meeting can be the best way to accurately document the town board's discussion regarding the interim ordinance and the development issues that have created a need for a township's planning. It is important for township officials to be aware of this option, and to choose whether it is appropriate to their township's situation.

**3. Develop a strategy for creating and using the interim ordinance.** Seek out a planning and zoning consultant or an attorney, or both. (See Appendix A on page 28 for a list of resources.) They can help outline the whole process and draft language that will help prevent or withstand legal challenges. Hire people who know how to use the interim ordinance and write comprehensive planning and zoning ordinances where large-scale feedlot issues are involved.

Do your homework and hire competent help. Here are key questions to ask when hiring a consultant: What is their experience with Minnesota's municipal planning law and township law in general? What is their experience with comprehensive

planning and zoning in general and planning and zoning when large-scale feedlot issues are present? Who were their previous clients, and may they be contacted for references? Consultants and attorneys will cost money, so part of the strategy may include how to pay for them. Townships have the authority to appropriate money to finance their planning and zoning activities.

**4. Write the draft interim ordinance.** The interim ordinance is a legal document that can be as brief as a few pages. In general, an interim ordinance should document the board's evidence and reasons for passing a restriction or moratorium on the specific types of developments listed in the interim ordinance, cite the grant of authority to pass the interim ordinance as *Minnesota Statutes* section 462.355 subd. 4, and list whether the board is conducting studies or has authorized a study to be conducted or has held or is scheduled to hold a hearing to consider adopting or amending a comprehensive plan or official controls and the dates the interim ordinance will begin and end. (Refer to *Minnesota Statutes* section 462.355, subdivision 4 in Appendix B on page 29 when reading the list below, and when writing the interim ordinance.) Key sections of an interim ordinance are suggested below; this list should adapt to fit each township's situation with the help of a consultant or an attorney.

- State that the town board intends to study the need for writing a comprehensive plan and zoning ordinance, or the need to review an existing plan and zoning ordinance, and that the town board has the authority to adopt an interim ordinance in order to protect the town board's planning process.
- Cite the date when the town board will report the findings of that study (e.g. "six months from the date the interim ordinance is adopted"). The town board should conduct a hearing on that date to make a final report, or

if a final report is not complete, to report findings to date.

- Cite why the town board is considering starting a planning and zoning process.
- Specify the types of developments the interim ordinance is stopping or restricting and how any such restrictions apply. For example, to stop large-scale feedlots of a particular size, specify that the interim ordinance is intended to prohibit the building of new or the expansion of existing feedlots with more than 400 animal units. The language and size should fit each township's situation. Other types of developments that are commonly included in interim ordinances are gravel quarries, housing subdivisions, racetracks, adult entertainment facilities and junkyards.
- Cite the sections of Minnesota law that give townships the authority to use an interim ordinance to protect the township's planning and zoning process.
- Include "Findings of Fact" that document the township's objective reasons for stopping certain types of developments while the town board completes its planning process. Good sources for these findings of fact are scientific and government reports which give objective reasons for public concern about the relationship between large-scale feedlots (or other controversial developments) and the health, safety and welfare of the township. The township's consultant or attorney should help document an objective findings-of-fact section.
- Document the date or event that will end the moratorium. Language that would give the town board some flexibility would read: "The interim ordinance will end in one year from

the date of approval, or when the comprehensive plan and zoning ordinance has been implemented, whichever comes first." If the town board has not completed a comprehensive plan after a year and the interim ordinance is about to expire, it may extend the interim ordinance only under specific circumstances.

The interim ordinance requires a majority vote of the township officers to pass and, at minimum, the signature of the town board chair, the date of approval, and the signature of the town clerk who attests the chair's signature.

In Appendix D on page 50 are examples of interim ordinances enacted by townships. These are included to give an idea of the scope of an interim ordinance. ***These interim ordinances may help your township in creating your own unique ordinance but should not be simply copied. Your interim ordinance should be drafted with the advice of an attorney and must be created for the unique situation in your township.***

#### **5. Hold a public hearing with adequate (10 days) public notice.**

If your proposed interim ordinance affects feedlots, then a public hearing is required with a 10-day public notice (*Minnesota Statutes* section 462.355, subdivision 4b).

The town clerk should be familiar with the requirements for giving proper public notice. It is important to give proper notice so that it does not become a problem if there is a legal challenge to the interim ordinance.

The township should create an orderly process for public testimony at the hearing. This means creating simple rules,

#### ***Minnesota Statutes 462.355 Subd. 4b Interim Ordinance***

If a proposed interim ordinance purports to regulate, restrict or prohibit activities relating to livestock production, a public hearing must be held following a 10-day notice given by publication in a newspaper of general circulation in the municipality before the interim ordinance takes effect.

making them clear to those attending and sticking to them. You may want to distribute or post the rules at the meeting. The township board should require that everyone state their name and address before testifying. To assist with the public record they should also sign-in. The township board may want to limit the time of testimony, both how long each person can speak and how long overall testimony will be taken. The board can give priority to those wanting to testify who live in the township. The public hearing should be fair, but if the time allotted does not permit, it is not mandatory that everyone be allowed to give oral testimony. The board can accept written testimony also.

At the hearing, residents in favor of an interim ordinance should be prepared to present clearly the reasons why the township should begin the planning process and adopt an interim ordinance to protect the community from unwanted development such as large-scale feedlots, racetracks, adult entertainment facilities, etc. These should include scientific studies that demonstrate the potential harm of certain developments, as well as their own life experiences.

**6. Adopt the interim ordinance.** The interim ordinance can be enacted by a single majority vote of the township supervisors either at the same meeting at which the public hearing is held, or at a subsequent meeting. ***It should be publicly noticed that the township has adopted the interim ordinance.***

**7. Establish and begin the process for studying comprehensive planning and zoning.** It is important to remember that the purpose of the interim ordinance is to protect the planning process. The township board should establish a process for studying the issue of comprehensive planning and zoning and move forward with it in a timely manner.

State law requires that a township proposing to adopt or amend a feedlot zoning control, notifies the Minnesota Pollution Control Agency (MPCA) and the Minnesota Commissioner of Agriculture at the beginning of the process, but no later than the date notice is given of the first hearing proposing the adoption or amendment of the zoning control (*Minnesota Statutes* section 462.357, subdivision 1g).

The law does not clearly define the “beginning of the process.” However, because this section refers to adopting or amending a “zoning control,” it appears that the reference is to the beginning of the process to develop a zoning ordinance itself, and not the beginning of the development of the interim ordinance. (Interim ordinances are distinct from and are defined in a separate section of law than zoning ordinances.) Townships should discuss the timing of this required notice with their attorney. It may be prudent to notify these agencies of the public hearing regarding the interim ordinance. Keep in mind that these agencies have no power to prevent enactment of an interim ordinance.

### ***Minnesota Statutes 462.357 Subd. 1g Feedlot Zoning Controls***

A municipality proposing to adopt a new feedlot zoning control or to amend an existing feedlot zoning control must notify the Pollution Control Agency and commissioner of agriculture at the beginning of the process, no later than the date notice is given of the first hearing proposing to adopt or amend a zoning control purporting to address feedlots.

## B. What township residents can do to make sure the town board adopts an interim ordinance & uses its planning & zoning authority

Make township supervisors aware of the following:

- ✓ **Residents' concerns regarding the potential negative impacts of large-scale feedlots.** Township supervisors have the authority to protect the public health, safety and general welfare, to ensure a safer, more pleasant and more economical environment for residents, and to preserve agricultural and other open land. Residents can base their concerns on how large-scale feedlots negatively impact these areas and urge township supervisors to take action.
- ✓ **Ideas about how to solve existing or potential problems caused by large-scale feedlots.** When presenting ideas, residents may want to remind township supervisors they have the same legal authority as a city to plan and zone, and to use the interim ordinance to protect their planning and zoning process *and encourage them to use it.*
- ✓ **Refer town board members to resources, such as this guide, which can help them use their planning and zoning authority legally and with good long-term results for the township.**
- ✓ **Encourage the town board to appropriate adequate funding to pay for expertise needed for writing a comprehensive plan and zoning ordinance.** Remind the town board that a key benefit of planning is the amount of public and private money

that can be saved as a result of planning.

Before presenting issues to a town board, residents should know who their township supervisors are and their stance on these issues. How residents present information to their town board will differ from township-to-township. It may be strategic in some townships for residents to make a formal presentation at a town board meeting; in other townships, it may be more strategic for residents to meet with township supervisors individually, or both strategies may be appropriate.

**Once it begins, become an active participant in the town board's planning and zoning process:**

- ✓ Attend town board meetings and hearings. Most town boards meet monthly. To find out when they meet, contact a town board member, visit the town hall where the meeting schedule should be posted or available, or consult the paper of record where the town clerk may have published the board's schedule of meetings. Many townships also maintain websites.
- ✓ Help township supervisors assess the township's situation. For example, identify any existing or proposed large-scale feedlots or other controversial developments, either in that township or in nearby townships. Anyone can find out if a large-scale feedlot is being proposed. (See page 7 for how to do this.) Also, state law requires that the proposer, via first class mail, notify the township clerk

when a large-scale feedlot is proposed in the township.

- ✓ Join committees of the town board. Let board members know that if they move forward with planning and zoning, you and others will be on key committees and help with the work. Often township supervisors are reluctant to move forward unless they know they have help to do the work

of creating a comprehensive plan and zoning ordinances.

- ✓ Know what the town board is required to do so that residents can help the board follow correct procedures. When working with an unfriendly town board, residents may want to monitor whether a documented record is being kept and make a duplicate record if this is unclear.

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## C. What can happen when a township adopts an interim ordinance

**NOTE:** The following cases are included to give readers examples of what may happen when an interim ordinance is adopted. These case examples presume that the township has followed procedures outlined in the township planning laws and has thoroughly documented its planning process. Readers should be aware that a court will make its decisions based on the specific facts of each case, and its decisions may differ from what's noted in the cases below.

✧**Case 1: Prevention, no large-scale feedlots or other major development pending.** The best time for the township to use its planning authority is before any large-scale feedlot permits are applied for and before such feedlots are built in the township. These conditions give the township time to conduct a thorough planning process that can prevent unwanted development and its related costs and conflicts. Even if township residents and officials think that no developments are planned, begin the comprehensive planning and zoning process and adopt the interim ordinance anyway. There is no way for township officials to know whether or when

new developments may begin during the township's planning process. The interim ordinance offers insurance against unanticipated developments disrupting the township's planning process.

✧**Case 2: An application for a feedlot permit is pending but not yet granted.** If a proposer of a feedlot has merely applied for, but not been granted, county and state permits, then the feedlot is subject to the interim ordinance. Mere application for a permit does not give the applicant any special rights. Therefore, if the interim ordinance places a moratorium on feedlots over 1,000 animal units and a proposed feedlot is over 1,000 animal units, it cannot be built while the interim ordinance is in place, provided the ordinance was properly enacted in good faith.

If a township zoning ordinance is complete when the interim ordinance expires, this new zoning ordinance will determine whether any pending developments will be allowed to move forward and if so, how. The new ordinance may prohibit them or require a township permit. The development's proposers may need to modify their plans to meet the township's new zoning requirements. For

example, a township zoning ordinance can prohibit some types of developments or their proximity to nearby residences, rights-of-ways and waterways. Pending developments may have to modify plans accordingly to meet these new ordinances.

✦ **Case 3: Feedlot or other necessary permits have been granted but construction has NOT begun.** In many cases, the interim ordinance can delay the start of construction during the moratorium period, even if the permits have been granted. This may not be true in all situations. If the date of the interim ordinance's adoption and the date when the development has scheduled its construction to begin are close, the effect of the interim ordinance may be more complicated and less clear than usual. In this case, the town board's actions are more likely to be challenged by the developer—a development that has obtained permits has also invested a lot of money in blueprints and other documents for those permits. This possibility should not intimidate township supervisors from using their authority. Rather, supervisors should be aware that the developer will be watching the town board very closely. In the worst-case scenario, the developer may challenge the township

supervisors' decisions in court, at which point a well-documented record regarding the passage of the interim ordinance will be of utmost importance. However, this problem can be avoided entirely if townships watch for notifications for proposed large feedlots and, upon learning of any such proposed operations, immediately begin the process of passing an interim ordinance to protect the township's ability to complete the planning and zoning process.

✦ **Case 4: A development has received its permits AND has begun construction.** If a development has begun construction, there is little the township can do to control that project. In such a case, the township should consider exercising its authority to control the expansion of existing or new developments.

✦ **Case 5: The township already has large-scale livestock feedlots.** The township has no authority to undo existing developments. The township can use its planning and zoning authority, including the interim ordinance, to control the expansion of existing developments and to control new developments.

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## D. What if township supervisors are unwilling to adopt an interim ordinance?

Township supervisors may be unfriendly to residents' goals to control large-scale feedlot developments. While this type of situation will make a planning and zoning process more challenging, residents can try to hold township supervisors accountable to using their planning authority for addressing development issues within the township's

jurisdiction. It may happen that a majority of township supervisors vote against the interim ordinance. There is no way to appeal the township supervisors' decision regarding the interim ordinance. The only recourse available to residents is at the town elections, which are held on the second Tuesday in March.

## IV. After the Interim Ordinance Passes

Since the interim ordinance is by definition temporary, the period after it passes and before it expires is crucial for writing and adopting, or reviewing and amending, a comprehensive plan and zoning

ordinance. A well-written comprehensive plan and zoning ordinance will be specific enough to control large-scale feedlots as they are currently designed and general enough to control future undesirable land uses.

### A. Follow up to ensure that effective plans and ordinances are in place when the interim ordinance expires

**Begin or continue the study that was specified in the interim ordinance.** Continue to keep a documented record of what the town board studies, and how it conducts its study. Keeping a thoroughly documented record may be key to winning a legal challenge. A documented record provides evidence to a court that the town's process was procedurally correct; thus, the documented record should show what decisions the township supervisors made, how they were made, and on what information decisions were based.

The documented record should include the written minutes of meetings and may include audio or video recordings of hearings held by the town board. The town clerk should take minutes of all board meetings and hearings and should include all documents and handouts used during the meeting as part of the record of the meeting. Township officials should seek their attorney's advice about whether to document meetings of committees created by the town board.

A recording of a meeting can be the best or only way to accurately document the public testimony and discussion at a public hearing on the issues being considered as part of the comprehensive plan or the zoning ordinance. Any testimony offered at a hearing, either oral or written, should become part of the documented record. Any

documents submitted with testimony or otherwise should also be maintained as part of the record.

#### **Monitor the dates or events that trigger the expiration of the first interim ordinance.**

Township supervisors should prepare and enact a new resolution to extend the moratorium for whatever time the town board needs to complete its planning and zoning process.

**Hire the necessary legal and planning expertise.** They can advise township officials on matters such as:

- ✓ Whether the planning agency that will develop the comprehensive plan should include representatives from the town board and/or other individuals with appropriate expertise and knowledge.
- ✓ Preparing a checklist to ensure that all procedures required by chapter 462 of Minnesota law are followed.
- ✓ Following notice requirements for meetings and hearings.
- ✓ Continuing to document the record of the township's planning and zoning process.

#### **Write or amend the township's comprehensive plan and zoning ordinance.**

Writing a comprehensive plan can be a



rewarding exercise for the community. A proposed large-scale feedlot or other potentially harmful development may have prompted the township to adopt an interim ordinance. Because of that, for a time the focus may have been on what the township does not want, but ultimately a comprehensive plan is about what the township does want. The comprehensive plan will lay out the history, current condition and vision for the future of your community. It will become a map to guide your township

and be a proactive document the township can use to take control of its future.

Many townships that go through the process are surprised at the talent and commitment of residents that volunteer to help create this plan. Creating the comprehensive plan will take some help from professionals to help guide the process, but do not forget that it is township residents that will provide the time, vision and energy to make the comprehensive plan a reality and a document that reflects community values.

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## B. Barriers that townships can face in comprehensive planning and zoning

Often, townships don't exercise their planning and zoning authority because board members fear being sued for their actions. This guide is intended to help officials treat such a threat with a balanced point of view. On the one hand, legal challenges are possible and township supervisors should be aware of that possibility. On the other hand, township officials who plan and zone in good faith, follow proper procedures and thoroughly document their decisions, are less likely to be challenged in court, or if sued, are more likely to win the legal challenge.

There are no guarantees on how a court will decide each case it hears, but conducting a good faith process is a good defense for the township. Good advice from a planning and zoning consultant and an attorney will help the township act in good faith and avoid legal challenges. The township planning statute allows for any person "aggrieved" by actions of a township in using its comprehensive planning and development authority to request the District Court to review that action. In a judicial review, the types of issues the court will look at include whether the action was within the township's

jurisdiction, whether the action was reasonable, whether the policy created by the action promotes the public welfare, and whether the action is consistent with the comprehensive plan (if one exists), among other standards. ***The documented record is very important and must be maintained throughout the planning and zoning process. This cannot be emphasized enough.***

### Legal issues on which some townships have been challenged:

- ✓ **Discrimination.** Townships should avoid conducting their business in a way that may be judged as discriminating against an individual person or company. Courts have ruled that a municipality may not arbitrarily enact an interim ordinance to delay or prevent a single project. This does not mean that an interim ordinance cannot be enacted that only affects one project. Rather, it means the intent of the interim ordinance cannot be to only impact that one project. Since a court will probably look at the

documented record of the township's planning process, the issue of discrimination affects how the township gathers its information, how it writes its plan and ordinances, and what board members say at meetings.

- ✓ **Township jurisdiction.** In general, different governing bodies (federal, state, regions, county, townships) have limited jurisdictions to prevent their policies from conflicting with or preempting each other and to allow governments to operate smoothly. Townships have the legal authority and power to do comprehensive planning and zoning so as:
  - ❖ To ensure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities;
  - ❖ To preserve agricultural and open lands, and;
  - ❖ To promote the public health, safety, and general welfare.

However, when exercising this authority as it relates to large-scale feedlots, townships should take into account certain legal authorities of the MPCA and the county.

**1. State Agency Authority:** In general, the MPCA holds the primary jurisdiction over pollution control regulation of feedlots. Therefore, townships should create zoning controls for issues over which the township has zoning authority. They should not attempt to create zoning controls that would be viewed as pollution control because the state has almost exclusive authority over pollution regulation. For example, a township has the authority to establish parameters on where a large-scale feedlot can be located in relation to other types of land use in the township (residential, recreational, etc.), but a township does not have the authority to establish controls on the amount of waste

generated by large-scale feedlots in that township. Depending on any one township's situation, it's possible that there would be no appropriate location for a large-scale feedlot because of the goals established in the comprehensive plan, the presence of existing land uses, and the natural limits imposed by the landscape.

**2. County Authority:** For many issues over which the county has jurisdiction, the township ordinance must be as strict as, or stricter than, the county ordinance. For example, if the county ordinance requires a building to be set back 500 feet from the nearest residence, the township cannot adopt an ordinance specifying a 400-foot setback. It can specify 500 feet or more.

These and other examples of how governmental bodies carry related or overlapping legal powers and authority may affect how the township should draft ordinances. An attorney can help township officials identify and appropriately deal with these legal powers and authority issues.

***A commonly heard criticism is that if townships want to control large-scale feedlots, then the township must be against animal agriculture.*** It's a common way to confuse an issue by making misleading generalizations about it. However, the reality is that township citizens who oppose huge livestock factories are generally supportive of family farm-based livestock production and of sustainable agriculture.

Organizers and township officials should anticipate this argument and be prepared to distinguish the type of developments they seek to control— industrial, large-scale feedlots – from the type of agriculture they want in their community— independent, family-based, sustainable. Some key points for distinguishing industrial livestock factories from independently owned livestock farms are their size (as measured by the number of animals concentrated in one

facility), the amount of waste they generate per acre of land, and how much control the landowner has over the management of the facility located in the township.

This guide provides organizing resources in the next section that can help township officials and organizers avoid political debates that can pit neighbors

against neighbors or help residents where debates have become divisive. Debates should not prevent a township from using its authority to plan for the types of developments residents want in their community, and thus to control the types of developments that pose risks to the health, safety and general welfare of township citizens.

## V. Appendix A

### More Resources for Township Zoning Assistance

#### Land Stewardship Project Offices

180 East Main Street  
P.O. Box 130  
Lewiston, MN 55952  
507-523-3366

117 South 1<sup>st</sup> Street  
Montevideo, MN 56265  
320-269-2015

821 East 35<sup>th</sup> Street, Suite 200  
Minneapolis, MN 55407  
612-722-6377

[www.landstewardshipproject.org](http://www.landstewardshipproject.org)

Facebook: Land Stewardship Project

Twitter: @LSPnow

Instagram: @landstewardshipproject

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The Minnesota Association of Townships (MAT) is a voluntary membership organization representing 1,779 of Minnesota's 1,782 organized townships. MAT provides education, training and technical services to township officers. MAT has also provided workshops for township residents involved in the planning process. Their website has resources on township planning and zoning.

## VI. Appendix B

### ***Minnesota Statutes* chapter 462: “Municipal Planning”**

#### **Section 462.351 to 462.357, updated 2018**

The following is the portion of the municipal planning law that pertains to this guide. These laws, as well as all *Minnesota Statutes*, are available online at [www.revisor.mn.gov/statutes](http://www.revisor.mn.gov/statutes)

#### **Municipal Planning Statutes**

##### **462.351 MUNICIPAL PLANNING AND DEVELOPMENT; POLICY STATEMENT.**

The legislature finds that municipalities are faced with mounting problems in providing means of guiding future development of land so as to insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities, to preserve agricultural and other open lands, and to promote the public health, safety, and general welfare. Municipalities can prepare for anticipated changes and by such preparations bring about significant savings in both private and public expenditures. Municipal planning, by providing public guides to future municipal action, enables other public and private agencies to plan their activities in harmony with the municipality's plans. Municipal planning will assist in developing lands more wisely to serve citizens more effectively, will make the provision of public services less costly, and will achieve a more secure tax base. It is the purpose of sections 462.351 to 462.364 to provide municipalities, in a single body of law, with the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning.

History: 1965 c 670 s 1; 1980 c 566 s 18

##### **462.352 DEFINITIONS.**

Subdivision 1. **Application.** For the purposes of sections 462.351 to 462.364 the terms defined in this section have the meanings given them.

Subd. 2. **Municipality.** "Municipality" means any city, including a city operating under a home rule charter, and any town.

Subd. 3. **Planning agency.** "Planning agency" means the planning commission or the planning department of a municipality.

Subd. 4. [Repealed, 1980 c 566 s 35]

Subd. 5. **Comprehensive municipal plan.** "Comprehensive municipal plan" means a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality and its environs, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, including proposed densities for development, a community facilities plan, a transportation plan, and recommendations for plan execution. A comprehensive plan represents the planning agency's recommendations for the future development of the community.

Subd. 6. **Land use plan.** "Land use plan" means a compilation of policy statements, goals, standards, and maps, and action programs for guiding the future development of private and public property. The term includes a plan designating types of uses for the entire municipality as well as a specialized plan showing specific areas or specific types of land uses, such as residential,

commercial, industrial, public or semipublic uses or any combination of such uses. A land use plan may also include the proposed densities for development.

Subd. 7. **Transportation plan.** "Transportation plan" means a compilation of policy statements, goals, standards, maps and action programs for guiding the future development of the various modes of transportation of the municipality and its environs, such as streets and highways, mass transit, railroads, air transportation, trucking and water transportation, and includes a major thoroughfare plan.

Subd. 8. **Community facilities plan.** "Community facilities plan" means a compilation of policy statements, goals, standards, maps and action programs for guiding the future development of the public or semipublic facilities of the municipality such as recreational, educational and cultural facilities.

Subd. 9. **Capital improvement program.** "Capital improvement program" means an itemized program setting forth the schedule and details of specific contemplated public improvements by fiscal year, together with their estimated cost, the justification for each improvement, the impact that such improvements will have on the current operating expense of the municipality, and such other information on capital improvements as may be pertinent.

Subd. 10. **Official map.** "Official map" means a map adopted in accordance with section 462.359, which may show existing and proposed future streets, roads, highways, and airports of the municipality and county, the area needed for widening of existing streets, roads, and highways of the municipality and county, and existing and future county state aid highways and state trunk highway rights-of-way. An official map may also show the location of existing and future public land and facilities within the municipality. In counties in the metropolitan area as defined in section 473.121, official maps may for a period of up to five years designate the boundaries of areas reserved for purposes of soil conservation, water supply conservation, flood control, and surface water drainage and removal, including appropriate regulations protecting those areas against encroachment by buildings or other physical structures or facilities.

Subd. 11. **Governing body.** "Governing body" in the case of cities means the council by whatever name known, and in the case of a town, means the town board.

Subd. 12. **Subdivision.** "Subdivision" means the separation of an area, parcel, or tract of land under single ownership into two or more parcels, tracts, lots, or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys, for residential, commercial, industrial, or other use or any combination thereof, except those separations:

- (1) where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;
- (2) creating cemetery lots;
- (3) resulting from court orders, or the adjustment of a lot line by the relocation of a common boundary.

Subd. 13. **Plat.** "Plat" means the drawing or map of a subdivision prepared for filing of record pursuant to chapter 505 and containing all elements and requirements set forth in applicable local regulations adopted pursuant to section 462.358 and chapter 505.

Subd. 14. **Subdivision regulation.** "Subdivision regulation" means an ordinance adopted pursuant to section 462.358 regulating the subdivision of land.

Subd. 15. **Official controls.** "Official controls" or "controls" means ordinances and regulations which control the physical development of a city, county or town or any part thereof or

any detail thereof and implement the general objectives of the comprehensive plan. Official controls may include ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.

Subd. 16. **Preliminary approval.** "Preliminary approval" means official action taken by a municipality on an application to create a subdivision which establishes the rights and obligations set forth in section 462.358 and the applicable subdivision regulation. In accordance with section 462.358, and unless otherwise specified in the applicable subdivision regulation, preliminary approval may be granted only following the review and approval of a preliminary plat or other map or drawing establishing without limitation the number, layout, and location of lots, tracts, blocks, and parcels to be created, location of streets, roads, utilities and facilities, park and drainage facilities, and lands to be dedicated for public use.

Subd. 17. [Repealed, 2001 c 7 s 91]

Subd. 18. **Urban growth area.** "Urban growth area" means the identified area around an urban area within which there is a sufficient supply of developable land for at least a prospective 20-year period, based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area.

History: 1965 c 670 s 2; 1973 c 123 art 5 s 7; 1974 c 317 s 2; 1980 c 509 s 153; 1980 c 566 s 19-23; 1982 c 507 s 21; 1982 c 520 s 3; 1985 c 194 s 17-22; 1989 c 209 art 2 s 1; 1997 c 202 art 4 s 7-9; 2001 c 7 s 69-73; 2005 c 41 s 16

#### **462.353 AUTHORITY TO PLAN; FUNDS; FEES; APPEAL.**

Subdivision 1. **General authority.** A municipality may carry on comprehensive municipal planning activities for guiding the future development and improvement of the municipality and may prepare, adopt and amend a comprehensive municipal plan and implement such plan by ordinance and other official actions in accordance with the provisions of sections 462.351 to 462.364.

Subd. 2. **Studies and reports.** In exercising its powers under subdivision 1, a municipality may collect and analyze data, prepare maps, charts, tables, and other illustrations and displays, and conduct necessary studies. A municipality may publicize its purposes, suggestions, and findings on planning matters, may distribute reports thereon, and may advise the public on the planning matters within the scope of its duties and objectives. The commissioner of natural resources must provide the natural heritage data from the county biological survey, if available, to each municipality for use in the comprehensive plan.

Subd. 3. **Appropriation and contracts.** A municipality may appropriate moneys from any fund not dedicated to other purposes in order to finance its planning activities. A municipality may receive and expend grants and gifts for planning purposes and may enter into contracts with the federal and state governments or with other public or private agencies in furtherance of the planning activities authorized by sections 462.351 to 462.364.

Subd. 4. **Fees.**

(a) A municipality may prescribe fees sufficient to defray the costs incurred by it in reviewing, investigating, and administering an application for an amendment to an official control established pursuant to sections 462.351 to 462.364 or an application for a permit or other approval required under an official control established pursuant to those sections. Except as

provided in subdivision 4a, fees as prescribed must be by ordinance. Fees must be fair, reasonable, and proportionate and have a nexus to the actual cost of the service for which the fee is imposed.

(b) A municipality must adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected. Upon request, a municipality must explain the basis of its fees.

(c) Except as provided in this paragraph, a fee ordinance or amendment to a fee ordinance is effective January 1 after its adoption. A municipality may adopt a fee ordinance or an amendment to a fee ordinance with an effective date other than the next January 1, but the ordinance or amendment does not apply if an application for final approval has been submitted to the municipality.

(d) If a dispute arises over a specific fee imposed by a municipality related to a specific application, the person aggrieved by the fee may appeal under section 462.361, provided that the appeal must be brought within 60 days after approval of an application under this section and deposit of the fee into escrow. A municipality must not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee. An approved application may proceed as if the fee had been paid, pending a decision on the appeal. This paragraph must not be construed to preclude the municipality from conditioning approval of any proposed subdivision or development on an agreement to waive a challenge to the cost associated with municipally installed improvements of the type described in section 429.021.

Subd. 4a. **Fee schedule allowed.** A municipality that collects an annual cumulative total of \$5,000 or less in fees under this section may prescribe the fees or refer to a fee schedule in the ordinance governing the official control or permit. A municipality may adopt a fee schedule under this subdivision by ordinance or resolution, either annually or more frequently, following publication of notice of proposed action on a fee schedule at least ten days prior to a public hearing held to consider action on or approval of the fee schedule. A municipality that collects a cumulative total in excess of \$5,000 in fees under this section may prescribe a fee schedule by ordinance by following the notice and hearing procedures specified in this subdivision.

Subd. 5. **Certify taxes paid.** A municipality may require, either as part of the necessary information on an application or as a condition of a grant of approval, an applicant for an amendment to an official control established pursuant to sections 462.351 to 462.364, or for a permit or other approval required under an official control established pursuant to those sections to certify that there are no delinquent property taxes, special assessments, penalties, interest, and municipal utility fees due on the parcel to which the application relates. Property taxes which are being paid under the provisions of a stipulation, order, or confession of judgment, or which are being appealed as provided by law, are not considered delinquent for purposes of this subdivision if all required payments that are due under the terms of the stipulation, order, confession of judgment, or appeal have been paid.

History: 1965 c 670 s 3; 1982 c 415 s 1; 1996 c 282 s 3; 1997 c 2 s 3; 2001 c 207 s 11; 2003 c 93 s 1,2; 2004 c 178 s 1; 2007 c 57 art 1 s 154

#### **462.3531 WAIVER OF RIGHTS.**

Any waiver of rights of appeal under section 429.081 is effective only for the amount of assessment estimated or for the assessment amount agreed to in the development agreement. An effective



waiver of rights of appeal under section 429.081 may contain additional conditions providing for increases in assessments that will not be subject to appeal if:

- (1) the increases are a result of requests made by the developer or property owner; or
- (2) the increases are otherwise approved by the developer or property owner in a subsequent separate written document.

History: 2001 c 207 s 12

#### **462.3535 COMMUNITY-BASED PLANNING.**

Subdivision 1. **General.** Each municipality is encouraged to prepare and implement a community-based comprehensive municipal plan.

Subd. 2. **Coordination.** A municipality that prepares a community-based comprehensive municipal plan shall coordinate its plan with the plans, if any, of the county and the municipality's neighbors both in order to prevent the plan from having an adverse impact on other jurisdictions and to complement the plans of other jurisdictions. The municipality shall prepare its plan to be incorporated into the county's community-based comprehensive plan, if the county is preparing or has prepared one, and shall otherwise assist and cooperate with the county in its community-based planning.

Subd. 3. **Joint planning.** Under the joint exercise of powers provisions in section 471.59, a municipality may establish a joint planning district with other municipalities or counties that are geographically contiguous, to adopt a single community-based comprehensive plan for the district. A municipality may delegate its authority to adopt official controls under sections 462.351 to 462.364, to the board of the joint planning district.

Subd. 4. **Cities; urban growth areas.** (a) The community-based comprehensive municipal plan for a statutory or home rule charter city, and official controls to implement the plan, must at a minimum, address any urban growth area identified in a county plan and may establish an urban growth area for the urbanized and urbanizing area. The city plan must establish a staged process for boundary adjustment to include the urbanized or urbanizing area within corporate limits as the urban growth area is developed and provided municipal services.

(b) Within the urban growth area, the plan must provide for the staged provision of urban services, including, but not limited to, water, wastewater collection and treatment, and transportation.

Subd. 5. **Urban growth area boundary adjustment process.**

(a) After an urban growth area has been identified in a county or city plan, a city shall negotiate, as part of the comprehensive planning process and in coordination with the county, an orderly annexation agreement with the townships containing the affected unincorporated areas located within the identified urban growth area. The agreement shall contain a boundary adjustment staging plan that establishes a sequencing plan over the subsequent 20-year period for the orderly growth of the city based on its reasonably anticipated development pattern and ability to extend municipal services into designated unincorporated areas located within the identified urban growth area. The city shall include the staging plan agreed upon in the orderly annexation agreement in its comprehensive plan. Upon agreement by the city and town, prior adopted orderly annexation agreements may be included as part of the boundary adjustment plan and comprehensive plan without regard to whether the prior adopted agreement is consistent with this section. When either the city or town requests that an existing orderly annexation agreement

affecting unincorporated areas located within an identified or proposed urban growth area be renegotiated, the renegotiated plan shall be consistent with this section.

(b) After a city's community-based comprehensive plan is approved under this section, the orderly annexation agreement shall be filed with the chief administrative law judge of the state Office of Administrative Hearings or any successor agency. Thereafter, the city may orderly annex the part or parts of the designated unincorporated area according to the sequencing plan and conditions contained in the negotiated orderly annexation agreement by submitting a resolution to the chief administrative law judge. The resolution shall specify the legal description of the area designated pursuant to the staging plan contained in the agreement, a map showing the new boundary and its relation to the existing city boundary, a description of and schedule for extending municipal services to the area, and a determination that all applicable conditions in the agreement have been satisfied. Within 30 days of receipt of the resolution, the chief administrative law judge shall review the resolution and if it finds that the terms and conditions of the orderly annexation agreement have been met, shall order the annexation. The boundary adjustment shall become effective upon issuance of an order by the chief administrative law judge. The chief administrative law judge shall cause copies of the boundary adjustment order to be mailed to the secretary of state, Department of Revenue, state demographer, and Department of Transportation. No further proceedings under chapter 414 or 572A shall be required to accomplish the boundary adjustment. This section provides the sole method for annexing unincorporated land within an urban growth area, unless the parties agree otherwise.

(c) If a community-based comprehensive plan is updated, the parties shall renegotiate the orderly annexation agreement as needed to incorporate the adjustments and shall refile the agreement with the chief administrative law judge.

**Subd. 6. Review by adjacent municipalities; conflict resolution.** Before a community-based comprehensive municipal plan is incorporated into the county's plan under section 394.232, subdivision 3, a municipality's community-based comprehensive municipal plan must be coordinated with adjacent municipalities within the county. As soon as practical after the development of a community-based comprehensive municipal plan, the municipality shall provide a copy of the draft plan to adjacent municipalities within the county for review and comment. An adjacent municipality has 30 days after receipt to review the plan and submit written comments.

**Subd. 7. County review.**

(a) If a city does not plan for growth beyond its current boundaries, the city shall submit its community-based comprehensive municipal plan to the county for review and comment. A county has 60 days after receipt to review the plan and submit written comments to the city. The city may amend its plan based upon the county's comments.

(b) If a town prepares a community-based comprehensive plan, it shall submit the plan to the county for review and comment. As provided in section 394.33, the town plan may not be inconsistent with or less restrictive than the county plan. A county has 60 days after receipt to review the plan and submit written comments to the town. The town may amend its plan based on the county's comment.

**Subd. 8. County approval.**

(a) If a city plans for growth beyond its current boundaries, the city's proposed community-based comprehensive municipal plan and proposed urban growth area must be reviewed and approved by the county before the plan is incorporated into the county's plan. The county may review and provide comments on any orderly annexation agreement during the same period of review of a comprehensive plan.

(b) Upon receipt by the county of a community-based comprehensive plan submitted by a city for review and approval under this subdivision, the county shall, within 60 days of receipt of a city plan, review and approve the plan in accordance with this subdivision.

(c) In the event the county does not approve the plan, the county shall submit its comments to the city within 60 days. The city may, thereafter, amend the plan and resubmit the plan to the county. The county shall have an additional 60 days to review and approve a resubmitted plan. In the event the county and city are unable to come to agreement, either party may initiate the dispute resolution process contained in chapter 572A. Within 30 days of receiving notice that the other party has initiated dispute resolution, the city or county shall send notice of its intent to enter dispute resolution. If the city refuses to enter the dispute resolution process, it must refund any grant received from the county for community-based planning activities.

Subd. 9. [Repealed, 2011 c 76 art 4 s 8]

Subd. 10. [Repealed, 2011 c 76 art 4 s 8]

History: 1997 c 202 art 4 s 10; 2008 c 196 art 2 s 9; 2011 c 76 art 4 s 2,3

#### **462.354 ORGANIZATION FOR PLANNING.**

Subdivision 1. **Planning agency.** A municipality may by charter or ordinance create a planning agency. A planning agency created by ordinance may be abolished by two-thirds vote of all the members of the governing body. The planning agency shall be advisory, except as other powers and duties are imposed on it by sections 462.351 to 462.364, by statute, by charter, or by ordinance consistent with the municipal charter. The planning agency may take the following alternative forms:

(1) It may consist of a planning commission, which may or may not include municipal officials among its members. The planning commission may be provided with staff which may be a division of the administrative structure of the municipal government. The commission shall be advisory directly to the governing body.

(2) It may consist of a planning department with a planning commission advisory to it and shall function as a department advisory to the governing body and the municipal administration. The planning department may be provided with an executive director and other staff as in the case of other municipal departments.

Subd. 2. **Board of adjustments and appeals.** The governing body of any municipality adopting or having in effect a zoning ordinance or an official map shall provide by ordinance for a board of appeals and adjustments. The board shall have the powers set forth in section 462.357, subdivision 6 and section 462.359, subdivision 4. Except as otherwise provided by charter, the governing body may provide alternatively that there be a separate board of appeals and adjustments or that the governing body or the planning commission or a committee of the planning commission serve as the board of appeals and adjustments, and it may provide an appropriate name for the board. The board may be given such other duties as the governing body may direct. In any municipality where the council does not serve as the board, the governing body may, except as otherwise provided by charter, provide that the decisions of the board on matters within its jurisdiction are final subject to judicial review or are final subject to appeal to the council and the right of later judicial review or are advisory to the council. Hearings by the board of appeals and adjustments shall be held within such time and upon such notice to interested parties as is provided in the ordinance establishing the board. The board shall within a reasonable time make its order

deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail. Any party may appear at the hearing in person or by agent or attorney. Subject to such limitations as may be imposed by the governing body, the board may adopt rules for the conduct of proceedings before it. Such rules may include provisions for the giving of oaths to witnesses and the filing of written briefs by the parties. The board shall provide for a record of its proceedings which shall include the minutes of its meetings, its findings, and the action taken on each matter heard by it, including the final order. In any municipality in which the planning agency does not act as the board of adjustments and appeals, the board shall make no decision on an appeal or petition until the planning agency, if there is one, or a representative authorized by it has had reasonable opportunity, not to exceed 60 days, to review and report to the board of adjustments and appeals upon the appeal or petition.

History: 1965 c 670 s 4; 1967 c 493 s 1

#### **462.355 ADOPT, AMEND COMPREHENSIVE PLAN; INTERIM ORDINANCE.**

Subdivision 1. **Preparation and review.** The planning agency shall prepare the comprehensive municipal plan. In discharging this duty, the planning agency shall consult with and coordinate the planning activities of other departments and agencies of the municipality to insure conformity with and to assist in the development of the comprehensive municipal plan. In its planning activities, the planning agency shall take due cognizance of the planning activities of adjacent units of government and other affected public agencies. The planning agency shall periodically review the plan and recommend amendments whenever necessary. When preparing or recommending amendments to the comprehensive plan, the planning agency of a municipality located within a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, must consider adopting goals and objectives that will protect open space and the environment.

Subd. 1a. **Update by metropolitan municipalities.** Each municipality in the metropolitan area, as defined in section 473.121, subdivision 2, shall review and update its comprehensive plan and fiscal devices and official controls as provided in section 473.864, subdivision 2.

Subd. 2. **Procedure to adopt, amend.** The planning agency may, unless otherwise provided by charter or ordinance consistent with the municipal charter, recommend to the governing body the adoption and amendment from time to time of a comprehensive municipal plan. The plan may be prepared and adopted in sections, each of which relates to a major subject of the plan or to a major geographical section of the municipality. The governing body may propose the comprehensive municipal plan and amendments to it by resolution submitted to the planning agency. Before adopting the comprehensive municipal plan or any section or amendment of the plan, the planning agency shall hold at least one public hearing thereon. A notice of the time, place and purpose of the hearing shall be published once in the official newspaper of the municipality at least ten days before the day of the hearing.

Subd. 3. **Adoption by governing body.** A proposed comprehensive plan or an amendment to it may not be acted upon by the governing body until it has received the recommendation of the planning agency or until 60 days have elapsed from the date an amendment proposed by the governing body has been submitted to the planning agency for its recommendation. Unless otherwise provided by charter, the governing body may by resolution adopt and amend the comprehensive plan or portion thereof as the official municipal plan upon such notice and hearing

as may be prescribed by ordinance. Except for amendments to permit affordable housing development, a resolution to amend or adopt a comprehensive plan must be approved by a two-thirds vote of all of the members. Amendments to permit an affordable housing development are approved by a simple majority of all of the members. For purposes of this subdivision, "affordable housing development" means a development in which at least 20 percent of the residential units are restricted to occupancy for at least ten years by residents whose household income at the time of initial occupancy does not exceed 60 percent of area median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development, and with respect to rental units, the rents for affordable units do not exceed 30 percent of 60 percent of area median income, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development.

**Subd. 4. Interim ordinance.**

(a) If a municipality is conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or official controls as defined in section 462.352, subdivision 15, or if new territory for which plans or controls have not been adopted is annexed to a municipality, the governing body of the municipality may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

(b) If a proposed interim ordinance purports to regulate, restrict, or prohibit activities relating to livestock production, a public hearing must be held following a ten-day notice given by publication in a newspaper of general circulation in the municipality before the interim ordinance takes effect.

(c)(1) A statutory or home rule charter city may adopt an interim ordinance that regulates, restricts, or prohibits a housing proposal only if the ordinance is approved by majority vote of all members of the city council.

(2) Before adopting the interim ordinance, the city council must hold a public hearing after providing written notice to any person who has submitted a housing proposal, has a pending housing proposal, or has provided a written request to be notified of interim ordinances related to housing proposals. The written notice must be provided at least three business days before the public hearing. Notice also must be posted on the city's official Web site, if the city has an official Web site.

(3) The date of the public hearing shall be the earlier of the next regularly scheduled city council meeting after the notice period or within ten days of the notice.

(4) The activities proposed to be restricted by the proposed interim ordinance may not be undertaken before the public hearing.

(5) For the purposes of this paragraph, "housing proposal" means a written request for city approval of a project intended primarily to provide residential dwellings, either single family or multi-family, and involves the subdivision or development of land or the demolition, construction, reconstruction, alteration, repair, or occupancy of residential dwellings.

(d) The period of an interim ordinance applicable to an area that is affected by a city's master plan for a municipal airport may be extended for such additional periods as the municipality may deem appropriate, not exceeding a total additional period of 18 months. In all other cases, no interim ordinance may halt, delay, or impede a subdivision that has been given preliminary

approval, nor may any interim ordinance extend the time deadline for agency action set forth in section 15.99 with respect to any application filed prior to the effective date of the interim ordinance. The governing body of the municipality may extend the interim ordinance after a public hearing and written findings have been adopted based upon one or more of the conditions in clause (1), (2), or (3). The public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing. The interim ordinance may be extended for the following conditions and durations, but, except as provided in clause (3), an interim ordinance may not be extended more than an additional 18 months:

- (1) up to an additional 120 days following the receipt of the final approval or review by a federal, state, or metropolitan agency when the approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance;
- (2) up to an additional 120 days following the completion of any other process required by a state statute, federal law, or court order, when the process is not completed at least 30 days before the expiration of the interim ordinance; or
- (3) up to an additional one year if the municipality has not adopted a comprehensive plan under this section at the time the interim ordinance is enacted.

History: 1965 c 670 s 5; 1976 c 127 s 21; 1977 c 347 s 68; 1980 c 566 s 24; 1983 c 216 art 1 s 67; 1985 c 62 s 1,2; 1995 c 176 s 4; 2004 c 258 s 1; 2005 c 41 s 17; 1Sp2005 c 1 art 1 s 91; 2008 c 297 art 1 s 59; 2010 c 347 art 1 s 24; 2017 c 94 art 11 s 3

#### 462.356 PROCEDURE TO EFFECT PLAN: GENERALLY.

Subdivision 1. **Recommendations for plan execution.** Upon the recommendation by the planning agency of the comprehensive municipal plan or sections thereof, the planning agency shall study and propose to the governing body reasonable and practicable means for putting the plan or section of the plan into effect. Subject to the limitations of the following sections, such means include, but are not limited to, zoning regulations, regulations for the subdivision of land, an official map, a program for coordination of the normal public improvements and services of the municipality, urban renewal and a capital improvements program.

Subd. 2. **Compliance with plan.** After a comprehensive municipal plan or section thereof has been recommended by the planning agency and a copy filed with the governing body, no publicly owned interest in real property within the municipality shall be acquired or disposed of, nor shall any capital improvement be authorized by the municipality or special district or agency thereof or any other political subdivision having jurisdiction within the municipality until after the planning agency has reviewed the proposed acquisition, disposal, or capital improvement and reported in writing to the governing body or other special district or agency or political subdivision concerned, its findings as to compliance of the proposed acquisition, disposal or improvement with the comprehensive municipal plan. Failure of the planning agency to report on the proposal within 45 days after such a reference, or such other period as may be designated by the governing body shall be deemed to have satisfied the requirements of this subdivision. The governing body may, by resolution adopted by two-thirds vote dispense with the requirements of this subdivision when in its judgment it finds that the proposed acquisition or disposal of real property or capital improvement has no relationship to the comprehensive municipal plan.

History: 1965 c 670 s 6

**462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.**

Subdivision 1. **Authority for zoning.** For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in sections 103F.201 to 103F.221, access to direct sunlight for solar energy systems as defined in section 216C.06, flood control or other purposes, and may establish standards and procedures regulating such uses. To accomplish these purposes, official controls may include provision for purchase of development rights by the governing body in the form of conservation easements under chapter 84C in areas where the governing body considers preservation desirable and the transfer of development rights from those areas to areas the governing body considers more appropriate for development. No regulation may prohibit earth sheltered construction as defined in section 216C.06, subdivision 14, relocated residential buildings, or manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section. The regulations may divide the surface, above surface, and subsurface areas of the municipality into districts or zones of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.

Subd. 1a. **Certain zoning ordinances.** A municipality must not enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home setback requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements.

Subd. 1b. **Conditional uses.** A manufactured home park, as defined in section 327.14, subdivision 3, is a conditional use in a zoning district that allows the construction or placement of a building used or intended to be used by two or more families.

Subd. 1c. **Amortization prohibited.** Except as otherwise provided in this subdivision, a municipality must not enact, amend, or enforce an ordinance providing for the elimination or termination of a use by amortization which use was lawful at the time of its inception. This

subdivision does not apply to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

Subd. 1d. **Nuisance.** Subdivision 1c does not prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, as defined in section 561.01, or eliminating a use determined to be a public nuisance, as defined in section 617.81, subdivision 2, paragraph (a), clauses (i) to (ix), without payment of compensation.

Subd. 1e. **Nonconformities.**

(a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

- (1) the nonconformity or occupancy is discontinued for a period of more than one year; or
- (2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

(d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A municipality shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).

(e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

- (1) all structure and septic system setback distance requirements can be met;
- (2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and
- (3) the impervious surface coverage does not exceed 25 percent of the lot.



(f) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

- (1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;
- (2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;
- (3) impervious surface coverage must not exceed 25 percent of each lot; and
- (4) development of the lot must be consistent with an adopted comprehensive plan.

(g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(j) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

Subd. 1f. **Substandard structures.** Notwithstanding subdivision 1e, Minnesota Rules, parts 6105.0351 to 6105.0550, may allow for the continuation and improvement of substandard structures, as defined in Minnesota Rules, part 6105.0354, subpart 30, in the Lower Saint Croix National Scenic Riverway.

Subd. 1g. **Feedlot zoning controls.**

(a) A municipality proposing to adopt a new feedlot zoning control or to amend an existing feedlot zoning control must notify the Pollution Control Agency and commissioner of agriculture at the beginning of the process, no later than the date notice is given of the first hearing proposing to adopt or amend a zoning control purporting to address feedlots.

(b) Prior to final approval of a feedlot zoning control, the governing body of a municipality may submit a copy of the proposed zoning control to the Pollution Control Agency and to the commissioner of agriculture and request review, comment, and recommendations on the environmental and agricultural effects from specific provisions in the ordinance.

(c) The agencies' response to the municipality may include:

- (1) any recommendations for improvements in the ordinance; and
- (2) the legal, social, economic, or scientific justification for each recommendation under clause (1).

(d) At the request of the municipality's governing body, the municipality must prepare a report on the economic effects from specific provisions in the ordinance. Economic analysis must state whether the ordinance will affect the local economy and describe the kinds of businesses

affected and the projected impact the proposal will have on those businesses. To assist the municipality, the commissioner of agriculture, in cooperation with the Department of Employment and Economic Development, must develop a template for measuring local economic effects and make it available to the municipality. The report must be submitted to the commissioners of employment and economic development and agriculture along with the proposed ordinance.

(e) A local ordinance that contains a setback for new feedlots from existing residences must also provide for a new residence setback from existing feedlots located in areas zoned agricultural at the same distances and conditions specified in the setback for new feedlots, unless the new residence is built to replace an existing residence. A municipality may grant a variance from this requirement under section 462.358, subdivision 6.

Subd. 1h. **Comprehensive plans in greater Minnesota; open spaces.** When adopting or updating a comprehensive plan in a municipality located within a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, and that is located outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider adopting goals and objectives for the preservation of agricultural, forest, wildlife, and open space land and the minimization of development in sensitive shoreland areas. Within three years of updating the comprehensive plan, the municipality shall consider adopting ordinances as part of the municipality's official controls that encourage the implementation of the goals and objectives.

Subd. 2. **General requirements.** (a) At any time after the adoption of a land use plan for the municipality, the planning agency, for the purpose of carrying out the policies and goals of the land use plan, may prepare a proposed zoning ordinance and submit it to the governing body with its recommendations for adoption.

(b) Subject to the requirements of subdivisions 3, 4, and 5, the governing body may adopt and amend a zoning ordinance by a majority vote of all its members. The adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body.

(c) The land use plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the land use plan.

Subd. 3. **Public hearings.** No zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the planning agency or by the governing body. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the municipality at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

Subd. 4. **Amendments.** An amendment to a zoning ordinance may be initiated by the governing body, the planning agency, or by petition of affected property owners as defined in the zoning ordinance. An amendment not initiated by the planning agency shall be referred to the

planning agency, if there is one, for study and report and may not be acted upon by the governing body until it has received the recommendation of the planning agency on the proposed amendment or until 60 days have elapsed from the date of reference of the amendment without a report by the planning agency.

Subd. 5. **Amendment; certain cities of the first class.** The provisions of this subdivision apply to the adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial of a property located in a city of the first class, except a city of the first class in which a different process is provided through the operation of the city's home rule charter. In a city to which this subdivision applies, amendments to a zoning ordinance shall be made in conformance with this section but only after there shall have been filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the total contiguous descriptions of real estate held by the same owner or any party purchasing any such contiguous property within one year preceding the request, and after the affirmative vote in favor thereof by a majority of the members of the governing body of any such city. The governing body of such city may, by a two-thirds vote of its members, after hearing, adopt a new zoning ordinance without such written consent whenever the planning commission or planning board of such city shall have made a survey of the whole area of the city or of an area of not less than 40 acres, within which the new ordinance or the amendments or alterations of the existing ordinance would take effect when adopted, and shall have considered whether the number of descriptions of real estate affected by such changes and alterations renders the obtaining of such written consent impractical, and such planning commission or planning board shall report in writing as to whether in its opinion the proposals of the governing body in any case are reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use, and shall have conducted a public hearing on such proposed ordinance, changes or alterations, of which hearing published notice shall have been given in a daily newspaper of general circulation at least once each week for three successive weeks prior to such hearing, which notice shall state the time, place and purpose of such hearing, and shall have reported to the governing body of the city its findings and recommendations in writing.

Subd. 6. **Appeals and adjustments.** Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

- (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.
- (2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute

practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subd. 6a. **Normal residential surroundings for persons with disabilities.** It is the policy of this state that persons with disabilities should not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings. For purposes of subdivisions 6a through 9, "person" has the meaning given in section 245A.02, subdivision 11.

Subd. 7. **Permitted single family use.** A state licensed residential facility or a housing with services establishment registered under chapter 144D serving six or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445 to serve 14 or fewer children shall be considered a permitted single family residential use of property for the purposes of zoning, except that a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use.

Subd. 8. **Permitted multifamily use.** Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a state licensed residential facility serving from 7 through 16 persons or a licensed day care facility serving from 13 through 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

Subd. 9. **Development goals and objectives.** In adopting official controls after July 1, 2008, in a municipality outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider restricting new residential, commercial, and industrial development so that the new development takes place in areas subject to the following goals and objectives:

- (1) minimizing the fragmentation and development of agricultural, forest, wildlife, and open space lands, including consideration of appropriate minimum lot sizes;
- (2) minimizing further development in sensitive shoreland areas;
- (3) minimizing development near wildlife management areas, scientific and natural areas, and nature centers;
- (4) identification of areas of preference for higher density, including consideration of existing and necessary water and wastewater services, infrastructure, other services, and to the extent feasible, encouraging full development of areas previously zoned for nonagricultural uses;

(5) encouraging development close to places of employment, shopping centers, schools, mass transit, and other public and private service centers;

(6) identification of areas where other developments are appropriate; and

(7) other goals and objectives a municipality may identify.

History: 1965 c 670 s 7; 1969 c 259 s 1; 1973 c 123 art 5 s 7; 1973 c 379 s 4; 1973 c 539 s 1; 1973 c 559 s 1,2; 1975 c 60 s 2; 1978 c 786 s 14,15; Ex1979 c 2 s 42,43; 1981 c 356 s 248; 1982 c 490 s 2; 1982 c 507 s 22; 1984 c 617 s 6-8; 1985 c 62 s 3; 1985 c 194 s 23; 1986 c 444; 1987 c 333 s 22; 1989 c 82 s 2; 1990 c 391 art 8 s 47; 1990 c 568 art 2 s 66,67; 1994 c 473 s 3; 1995 c 224 s 95; 1997 c 113 s 20; 1997 c 200 art 4 s 5; 1997 c 202 art 4 s 11; 1997 c 216 s 138; 1999 c 96 s 3,4; 1999 c 211 s 1; 2001 c 174 s 1; 2001 c 207 s 13,14; 2002 c 366 s 6; 2004 c 258 s 2; 2005 c 56 s 1; 1Sp2005 c 1 art 1 s 92; art 2 s 146; 2007 c 140 art 12 s 14; 2008 c 297 art 1 s 60,61; 2009 c 149 s 3; 2011 c 19 s 2

## VII. Appendix C

### One township's experience with comprehensive planning and zoning: Newburg Township, Fillmore County



Moratorium adopted by Newburg Township

September 4, 2018 by Karen Reisner

During a well attended Newburg Township meeting held at the Mabel Community Center, the township board adopted, by a 2:1 vote, an interim moratorium on new feedlots of over 500 animal units or the expansion of existing feedlots to over 500 animal units and on the construction of new non-farm dwellings in agricultural areas. The moratorium is effective as of the date of its adoption, August 23, for one year.

Currently, Newburg Township does not have its own zoning ordinance, depending instead on the county zoning ordinance. A township can develop a more restrictive ordinance than the county's. Five townships have more restrictive ordinances than the county zoning ordinance.

The moratorium will allow the township time to appoint a committee of at least three members to conduct a study. The committee will look into whether the Fillmore County ordinance protects residents of the township sufficiently in its regulation of feedlots and other agricultural rural land uses. They will look into issues that lead to conflicts between owners of feedlots and of non-farm dwellings in agricultural areas. The township may decide to adopt a comprehensive plan and impose zoning regulations stricter than those within the county ordinance.

The interim moratorium became an option for many who were concerned about the possible environmental damage they felt may result from the construction and operation of a large hog facility in the township about 10 miles east of Harmony. The proposed 4,980 hog farrowing facility, Catalpa LLC, is to be located on majority shareholders Al and Merilee Hein's property. It is to be managed by Waukon Feed Ranch and the sows are to be owned by Holden Farms of Northfield. The concrete reinforced pit to be located under two barns would hold 8.9 million gallons of manure to be injected in the fall on at least 732 acres of cropland. The application of an expected 7.3 million gallons of manure each year in an area with karst geology has driven much of the controversy.

The two-hour public hearing was guided by attorney Troy Gilcrest, who practices town and municipal law. At an August 2 township meeting a draft interim ordinance was presented. The attorney explained Minnesota Statutes give the township the authority to impose a temporary moratorium.

Prior to the August 2 meeting, a lawsuit was filed by Al and Merilee Hein, owners of the proposed site of the farrowing facility, against the township, the township board and chair Oswald Landsom and supervisor Mark Gjere. The lawsuit asked for

the postponement of the meeting, during which language for a moratorium was to be introduced. The board members were accused of open meeting violations.

The Minnesota Pollution Control Agency has been considering whether a more comprehensive Environmental Impact Statement (EIS) will be required for the proposed farrowing facility before a permit is issued. An especially large number of written comments have been submitted to the MPCA during the comment period. A declaration from MPCA is expected in the coming weeks.

### ***Public Hearing.***

More than 20 people spoke during the public hearing, most in favor of the moratorium which will impose temporary restrictions. Many wore "I support Local Control in Newburg Township" stickers. Issues of concern included the risk of air and ground water pollution and road damage.

Lester Erickson, Newburg Township, supported a year long study due to the many caves and wells in the area. He seemed incensed by the lawsuit.

Bart Seebach, Newburg Township farm land owner and attorney, admitted it was reasonable to expect more feedlots. Good people have swine operations, but they are not family run like it use to be. It is appropriate to do a study and impose reasonable restrictions.

Pastor Pam Seebach added that their well is near a field where the manure is to be applied. The church well is vulnerable to nitrates. We should take the time we need to collect all the information before making a decision on a facility of this size; she supports the moratorium.

Irene and Glen Fishburn recently retired to Newburg and she opened a bakery. She was concerned about water quality. Michelle Hockersmith, Preble Township, wants time to make ourselves more knowledgeable. She expressed her support of

"local control." The size of the proposed facility concerned her; her biggest concern is water.

Gayle Stortz expressed strong support for the moratorium. She and her husband Lawrence live one mile away from the proposed site. Her concerns were air quality and water quality and quantity. Their water from their well already has high nitrates.

Minneapolis attorney Jack Perry is legal counsel for Al and Merilee Hein. He maintained that ERI (electrical resistivity imaging) has been done which can locate/identify karst, bedrock features, voids, etc. He added that manure management plans have been made and insurance protections are in place (\$1 million policy naming insured as Newburg Township). There are plans to protect the roadway, to protect groundwater, and to indemnify the township if they get sued. The protections run with the land. He added it is correct to want control, but insisted a moratorium is not the only way to get control. He offered a settlement agreement which he maintained would make Catalpa the most regulated feedlot in Minnesota.

Al Hein insisted the project has not had enough explanation, adding information should have been put out to the public earlier. He suggested a full explanation will show how environmentally friendly Catalpa is. He argued that hog manure is organic in nature and higher in nutrients than chemical fertilizers.

Brad Herman, general manager Waukon Feed Ranch, said he is a property owner in Newburg Township. He asked the board and the crowd to look at zoning long term and the negative effect on the tax base if the facility is not allowed. There will be higher taxes without growth. He asked that the project be allowed to go forward with restrictions.

Loni Kemp, Canton Township, lives two miles from the site. She hopes her

township also will develop appropriate zoning regulations. Her concerns were that concentrated feedlots are a threat to private wells, streams, water quality, and destructive to our communities. She wants an open public process so we can have the kind of agriculture that can co-exist with our communities.

Dayna Burtness said she supports the township officers and referred to the lawsuit as outrageous.

C. J. Robinson, Norway Township, commended the supervisors for being well informed. He asked those invested in the facility why they don't voluntarily do an EIS if the facility will be so environmentally friendly. He said \$1 million will not fix the aquifer once it is contaminated.

Veterinarian Ross Kiehne, Harmony Township, said he was a fan of pork production and has been a swine vet for 19 years. He is not worried about his health and his house is near his brother's hog facility.

Larry Rogich, Newburg Township, complained of road damage due to manure transport from a dairy farm. Manure runs near his house attracting flies and sloshes off tanks into a sinkhole.

Dan Dyrstra, Waukon Feed Ranch, noted there were a lot of changes in the hog industry in the '90s. He had an opportunity to come back to the area where he was raised north of Decorah because of these kind of operators. He maintained tourism is growing and co-existing with large farms.

Cathy Newman, Preble Township explained one of the fields where the manure is to be applied is about 100 feet from her well. She has been involved with raising hogs most of her life. She referred to Al Hein as an excellent neighbor, adding she has no problem with manure applications to the ground around us, as it is preferable to chemical fertilizers. She asked the board to read the settlement that has been offered.

Bonnie Haugen, Canton Township, maintained the moratorium makes sense. It will give them time to set parameters and it is healthy to think about a cap, a limit on size.

Andy Sollien, Mabel, was against the lawsuit. He asked those who were for the moratorium to stand; he told them we are proud of where we live.

### ***Township Board discussion.***

Supervisor Steve Melbostad asked what this moratorium cost the township in the future. Where will the money come from? When will the study committee meet, how many members, volunteer or paid, and will they meet with the board or on their own schedule? He said he was perplexed; it is a lot to handle in a short amount of time.

Gilcrest said there will be legal costs for his services, publication costs, and enforcement will be a significant cost as with any ordinance. The study group should be volunteers, unpaid. If the board gets involved in planning and zoning there will be some cost in developing and adopting an ordinance. There will be some cost for administration, permitting. The committee will be appointed by the board, follow open meeting law, and have scheduled public meetings. They should keep minutes and report back to the township board. There should be more than one point of view represented on the committee, so the board hears more than one perspective.

Melbostad commented that the township board gave up the right to regulate years ago, passing that to the county level. The county has personnel that does a good job. This will be a large undertaking for this board to handle.

Gilcrest noted he had received an email suggesting the interim ordinance restrict new feedlots to 300 animal units and that it not include a restriction on new non-farm dwellings.



Supervisor Mark Gjere stated there is nothing wrong with confined feedlots. We have to look at how we want our community to develop, the reason for residential restriction. Some townships restrict non-farm dwellings to preserve agricultural land. He recommended keeping both restrictions: for the size of feedlots and new non-farm dwellings.

Gjere said we don't have much choice, after having listened to the people

tonight. He moved to adopt the interim ordinance authorizing a study of planning and zoning and imposing a moratorium on feedlots and non-farm dwellings. The motion passed. A motion to adopt a resolution summarizing the interim ordinance for publication was approved. The moratorium will be in place 12 months and may result in the creation of a township zoning ordinance that is more restrictive than the Fillmore County ordinance.

## VIII. Appendix D

### Court Supports Township's Right to Enact Interim Ordinance

#### ***Mankato Free Press***

July 12, 1996

#### **Court overturns appeal on feedlot Mapleton couple unsure what their next step will be**

By ROBB MURRAY  
Free Press Staff Writer

**MANKATO** — A state Appeals Court has overturned a Blue Earth County District Court ruling that said a Danville Township moratorium on new development discriminated against a Mapleton farm couple.

The decision stems from a district court case pitting the township's board of supervisors against hog farmers Pat and Kristin Duncanson. At a township board meeting last July, the Duncansons proposed construction of a 4,800-hog feedlot on their land in Danville Township near Mapleton.

At the next township board meeting, zoning questions surfaced. By August, the township had enacted a one-year moratorium on new feedlots of more than 300 animal units, junkyards, salvage yards, hazardous waste facilities, mining and gravel pits and tire recycling facilities.

The Duncanson believe the ordinance specifically targeted them. They also believe the board's action was illegal because it held no hearings and published no public notices in local newspapers to adequately warn residents.

The district court said the ordinance was legal, but that it unfairly targeted the Duncansons. Judge Richard Kelly said the Duncansons could commence building their proposed feedlot near the intersection of Blue Earth County Roads 21 and 14.

But the township board appealed that decision, and the appellate court on Tuesday filed a ruling in its favor.

The township was not targeting the Duncansons, the court said, but merely acting in the best interest of township citizens. Because the board members didn't know how a feedlot of that size would affect the township, they were within their rights to limit development until the advice of experts could be sought.

"The Duncansons' proposal demonstrated the need for Danville to address a topic that had not previously been relevant to a primarily rural community," the appeals court said. "We find in this case that the board acted in good faith. It is in the good faith effort demonstrated here to plan for orderly development that must, we believe, defeat any objection that this ordinance is directed at any single project."

Regarding the Duncansons' claim the township violated state law by not publicizing its intention before enacting the moratorium, the court again sided against the Mapleton family.

The Danville ordinance, the court said, was enacted temporarily, thereby exempting it from state laws governing permanent zoning ordinances.

"We're obviously disappointed," Kristin Duncanson said.

"We're weighing our options to see what's going to happen next. I think this sends a very interesting message about zoning, and we're going to have to address that at the state level. I personally think it's dangerous for people at the township level to be zoning. They don't necessarily have the resources available to them to make all the right decisions."

Duncanson said she isn't sure if she and her husband will appeal the latest decision,

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***Mankato Free Press***

July 15, 1996

**LETTERS**

**Many townships handle their zoning**

K. Duncanson's statement regarding townships and zoning in your July 12 issue warrants a response.

She states, "I personally think it's dangerous for people at the township level to be zoning."

Many townships in the state have had a zoning ordinance for years. My township's ordinance has been in effect for 16 years, and it has been very successful in avoiding damage to our roads, protecting property values, and protecting the health, safety and welfare of our citizens.

Duncanson's concern is township authority over their proposal to build a large

confinement feedlot. She states, "Townships don't necessarily have all the resources available to them to make all the right decisions." Yet is it any more dangerous for townships to make decisions about controlling large feedlots than it is for local farmers to decide to build them? If necessary, township officials can consult with the experts the same way farmers consult the experts.

Duncanson obviously has no faith in grassroots government. Yet even the state acknowledges in the preamble to feedlot regulations that decisions about land-use planning are best made at the local level. Townships should decide what is best locally, because they are the government closest to the people.

**Nancy Barsness  
Clerk and Zoning Administrator  
New Prairie Township  
Pope County**

## IX. Appendix E

### Examples of Interim Ordinances passed by Minnesota Townships

**IMPORTANT NOTE:** These interim ordinances may help your township in creating your own unique ordinance, but should not simply be copied. Your interim ordinance should be drafted with the advice of an attorney and must be created for the unique situation in your township.

#### **RED ROCK TOWNSHIP INTERIM ORDINANCE**

**WHEREAS**, on the 10th day of December, 1996, at a monthly township board meeting, proper notice being provided, the issue of whether the township should adopt a township comprehensive plan and ordinance to address the township road issues and health and safety issues caused by large developments having significant impact upon the township was introduced;

**WHEREAS**, the town board has authority to adopt an Interim Ordinance/moratorium during which time the township will conduct a study of the possibility of adopting a comprehensive plan or official controls to fulfill the township's legal obligation to adequately protect the public roads, health, safety and welfare;

**WHEREAS**, other townships and counties have adopted moratorium ordinance to study the effects of large commercial enterprises upon rural townships;

**WHEREAS**, the town board makes the following

#### **FINDINGS OF FACT:**

1. The town board has authorized a study to be conducted for the purpose of considering adoption of a comprehensive plan as defined in section 462.352, subdivision 15.
2. The Interim Ordinance is to protect the health, safety and welfare of Red Rock Township residents and to protect the planning process, and not to delay or prevent a single project.

**NOW, THEREFORE**, based on the above findings of fact, the Red Rock Town Board hereby resolves:

To protect the planning process under the authority of Minnesota Statutes Section 462.355, Subdivision 4 and to protect the roads, health, safety and welfare of our citizens, the Red Rock Township Board hereby adopts an Interim Ordinance which prohibits the following land use developments within the township's jurisdiction:

1. the establishment and construction of any new animal feedlot over 1000 total animal units or an expansion of an existing animal feedlot which will have a cumulative total of over 1250 animal units as defined by Minnesota Pollution Control Agency Rules 7020.0300, also referred to as the Minnesota Pollution Control Agency-Water Quality Division-Animal

IX. Appendix E—Red Rock Township Interim Ordinance—*continued...*

Feedlots;

2. the construction of any new manure storage area with a capacity to accumulate manure from more than 1000 animal units, said animal units defined in number 1 above;
3. the establishment of any junkyard or salvage yard containing more than 6 unlicensed motor vehicles for resale purposes;
4. the establishment of any new industrial facility for storage of hazardous waste or demolition of waste;
5. the establishment of any commercial or industrial tire recycling facility;
6. the opening of any new gravel pit or rock quarry for commercial purposes.

This Interim Ordinance shall be in effect until the 9th day of December, 1997 or until the final adoption of an ordinance to regulate land use and development in Red Rock Township, whichever occurs first.

Approved by the Red Rock Town Board of Supervisors, on this 10th day of December, 1996, and signed this 10th day of December, 1996.

Robert M. Allen  
Supervisor

Gene G. Tapp  
Supervisor

Robert M. Allen  
Supervisor

Attest:

Frankie L. ...  
Clerk

**CERTIFICATION**

I hereby certify that the attached is a true and correct copy of an Interim Ordinance duly passed, adopted and approved by the Red Rock Township Board of Supervisors on the 10 day of Dec., 19 96.

Frankie L. ...  
Township Clerk

SEAL

**IX. Appendix E—Blooming Prairie Township Interim Ordinance**

**BLOOMING PRAIRIE TOWNSHIP INTERIM ORDINANCE**

**THE TOWN BOARD OF BLOOMING PRAIRIE TOWNSHIP HEREBY ORDAINS:**

**WHEREAS**, Blooming Prairie Township, Steele County, State of Minnesota, has adopted no zoning ordinance or animal feedlot ordinance regulating land use within the Township; and

**WHEREAS**, the Township needs time to consult with legal experts and/or technical experts and to review information in order to study the issues being raised by a number of possible large developments which could have a significant impact upon the Township roads, property values and upon the health, safety and welfare of our residents; and

**WHEREAS**, the Township hereby authorizes a study to be conducted to determine whether the Township should adopt a zoning ordinance; and

**WHEREAS**, the Township hereby sets the date of June 7, 2005 to conduct a public hearing for the purpose of presenting a proposed zoning ordinance(s) of Blooming Prairie Township;

**NOW, THEREFORE, THE BLOOMING PRAIRIE TOWNSHIP BOARD ORDAINS:**

**Section 101 Title**

This Interim Ordinance shall be known, cited and referred to as the Blooming Prairie Township Interim Ordinance.

**Section 102 Intent and Purpose**

This Interim Ordinance is adopted with the intent and purpose of:

- To protect the planning process under the authority of Minnesota Statutes Section 462.355.
- To protect public facilities, such as roads.
- To protect the health, safety, and welfare of our citizens.
- To protect property values of our citizens.

**Section 103 General Provisions**

**103.001. Jurisdiction.**

The jurisdiction of this Interim Ordinance shall apply to all the areas of Blooming Prairie Township.

**IX. Appendix E—Blooming Prairie Township Interim Ordinance—*continued*...**

**Section 104 Definitions**

- “animal feedlot” and “animal units” have the meaning given those terms in Minnesota Rules Section 7020.0300.
- This Interim Ordinance adopts the other definitions set forth in Minn.R. 7020.0300.

**Section 105 (Reserved for Future Use)**

**Section 106 Interim Prohibition on Land Use Developments**

The Township Board hereby adopts an Interim Ordinance that prohibits the following land use developments within the Township’s jurisdiction:

1. The development or construction of any manure storage structures for any animal feedlots over 800 animal units. There shall be no new concrete pits or earthen manure basins for proposed animal confinement operations with a capacity of over 800 animal units;
2. The development or construction of any buildings for any animal feedlots over 800 animal units. No new animal feedlot over 800 animal units shall be constructed/operated within 1500 of a neighboring dwelling or residence.
3. This Interim Ordinance does not apply to repairs, renovations, replacements or updates to existing structures or buildings that do not involve an increase in the number of animal units at an existing feedlot.

**Section 107 Violations and Enforcement**

**107.001 Violations.**

Any person, firm or corporation who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

**107.002 Enforcement.**

**a. Stop Work Orders.** Whenever any work is being done contrary to the provisions of this Interim Ordinance, the Township Board may order the work stopped by written notice personally served upon the contractor performing work or the owner or operator of the

**IX. Appendix E—Blooming Prairie Township Interim Ordinance—*continued*...**

property and/or project. All activities shall cease and desist until subsequent written authorization to proceed is received from the Township Board.

**b. Injunctive Relief and other Remedies.** In the event of a violation of this Interim Ordinance, the Township Board may institute appropriate actions or proceedings, including requesting injunctive relief, to prevent, restrain, correct or abate such violations.

**c. Costs of Enforcement Proceedings.** All costs incurred for corrective action may be recovered by the Township Board in a civil action in District Court, or at the discretion of the Township Board, the costs may be certified to the Township Auditor as a special tax against the real property. These and other remedies, as determined appropriate by the Township Board, may be imposed upon the responsible person either in addition to, or separate from, other enforcement actions.

**Section 108 Severability and Validity**

It is hereby declared to be the intention that several provisions of this Interim Ordinance are severable in accordance with the following:

**a.** If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to be invalid, such judgment shall not affect any other provisions not specifically included in said judgment.

**b.** If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to a particular property, building or structure, such judgment shall not affect other property, buildings or structures.



IX. Appendix E—Blooming Prairie Township Interim Ordinance—continued...

**Section 108 Effective Date**

This Interim Ordinance shall be in full force and effect from and after its passage and approval, as provided by law, until JAN 1, 2008 or until final adoption of a land use and/or feedlot Ordinance of Blooming Prairie Township, whichever occurs first.

PASSED AND APPROVED BY THE BLOOMING PRAIRIE TOWNSHIP BOARD OF SUPERVISORS THIS 7 day or June 2005.

Myron Fickel  
By: \_\_\_\_\_  
Its: Chair

ATTEST:  
Thomas J. Treiman  
By: \_\_\_\_\_  
Its: Township Clerk

The foregoing instrument was acknowledged before me this 8 day of JUNE, 2005, by Myron Fickel, Chair of the Blooming Prairie Township Board.

Subscribed and sworn to before me this 8 day of JUNE 2005.



Brian A. Betlach  
Notary Public

The foregoing instrument was acknowledged before me this 8 day of JUNE, 2005, by Thomas Treiman, Clerk of the Blooming Prairie Township Board.

Subscribed and sworn to before me this 8 day of JUNE, 2005.

Brian A. Betlach  
Notary Public



THIS INSTRUMENT WAS DRAFTED BY:  
Peters & Peters PLC  
James P. Peters #177623  
507 N. Nokomis St., #100  
Alexandria, MN 56308  
(320) 763-8458

## IX. Appendix E—Yucatan Township Interim Ordinance on Frac Sand Mining

**YUCATAN TOWNSHIP  
BOARD OF SUPERVISORS**

**INTERIM ORDINANCE and MORATORIUM**

**WHEREAS:**

1. Minnesota Statutes § 462.355, subd.4, authorizes a township board of supervisors to approve, implement and enforce an interim ordinance or moratorium designed to prohibit a land use activity for a period up to one year, during which time the township board of supervisors conducts a study of the land use activity being prohibited.
2. The demand, scope, purpose and technology of industrial mineral mining operations has changed substantially in recent years, prompting regional, county and township concerns about the adverse impact of industrial mining operations on public health, water quality and contamination, excessive water consumption, traffic hazards, road repair and maintenance, property value deterioration, damage to nearby rivers and streams, the introduction of large-scale industrial activity into agricultural and recreational areas, and environmental degradation.
3. Numerous township residents have voiced concern about the potential adverse impacts of introducing industrial mineral mining operations into this township.
4. The Houston County board of commissioners recently accepted a petition from residents of Houston County for environmental review of a proposed industrial minerals mining project located in Yucatan Township.
5. The Houston County board of commissioners determined that such proposed industrial minerals mining project located in Yucatan Township has “the potential for significant environmental effects”.
6. This township has several existing small rock quarries and sand pits from which “construction minerals” are excavated and mined.
7. This township values and derives benefits from the excavation and mining of “construction minerals” from excavation and mining sites within this township.
8. The definition of “construction minerals” is natural common rock, stone, aggregate, gravel and sand that is excavated, mined and produced for local construction purposes, including road pavement, unpaved road gravel or cover, concrete, asphalt, building and dimension stone, railroad ballast, decorative stone, retaining walls, riprap, mortar sand, construction lime, agricultural lime and bedding sand for livestock operations, sewer and septic systems and sand blasting. That definition is contained in the North American Industry Classification System administered by the US Census Agency as classification number 212321. That definition is also used by the Minnesota Department of Natural Resources in its minerals classification.
9. The definition of “construction minerals” does not include silica sand or high quality quartz, which are included within the definition of “industrial minerals”.

**IX. Appendix E—Yucatan Township Interim Ordinance on Frac Sand Mining—*continued*...**

10. The definition of “industrial minerals” include all natural stone, silica sand, quartz, graphite, diamonds, gemstones, kaolin, and other similar minerals used in industrial applications. That definition is contained in the North American Industry Classification System administered by the US Census Agency as classification number 212322. That definition is also used by the Minnesota Department of Natural Resources in its minerals classification.

11. Several counties and townships in southeastern Minnesota, including Houston County, have recently adopted and implemented moratoria or interim ordinances to temporarily prohibit the extraction and mining of “industrial minerals” to enable local government units to study the potential impact of industrial minerals extraction and mining activity.

**RESOLUTIONS**

**RESOLVED:**

1. The Board of Supervisors is authorized to immediately begin conducting a study of industrial minerals mining activity to determine its potential impact upon the public health, water quality and quantity, traffic hazards, road repair and maintenance, compatibility with township land use vision and environmental degradation.

2. The Board of Supervisors hereby creates and authorizes a planning commission to conduct a study of industrial minerals mining activity to determine its potential impact upon public health, water quality and contamination, excessive water consumption, traffic hazards, road repair and maintenance, property value deterioration, damage to nearby rivers and streams, the introduction of large-scale industrial activity into agricultural and recreational areas, and environmental degradation; and to make land use recommendations to this Board of Supervisors.

3. The Board of Supervisors will appoint residents of Yucatan Township to serve on the planning commission, including one member of the Board of Supervisors.

4. The Yucatan Township Board of Supervisors approves an interim ordinance or moratorium prohibiting all new and expanded industrial minerals mining and excavation activity within this township for a period of one year, effective immediately.

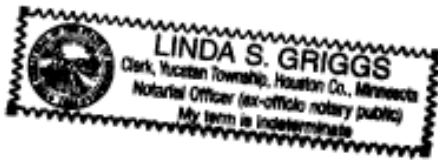
5. During the period of this moratorium, no person or property owner will (i) mine or extract, or allow other persons to mine or extract, from land located within this township any industrial minerals, (ii) drill, or allow other persons to drill, any exploratory wells on land located within this township for the purpose of determining the feasibility of mining or extracting any industrial minerals, or (iii) wash or otherwise process, or allow other persons to wash or process, on land located within this township any mined or extracted industrial minerals.

6. Persons or property owners engaged in the extraction and mining of “construction minerals” are exempt and excluded from this moratorium or interim ordinance; provided that such persons or property owners do not engage in the mining or extraction of “industrial minerals” during the period of this moratorium or interim ordinance.

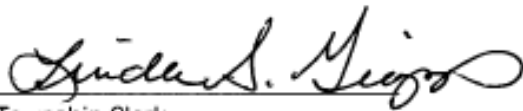
**IX. Appendix E—Yucatan Township Interim Ordinance on Frac Sand Mining—*continued...***

7. The clerk of Yucatan Township is directed to (i) publish and give notice of this moratorium in the authorized legal newspaper for this township, and (ii) give notice of this moratorium to the Houston County Zoning Administrator.
8. The Board of Supervisors is authorized and empowered to enforce this moratorium through all available legal means, including litigation if necessary.
9. Any person or property owner determined to be responsible for violating this moratorium will be liable to Yucatan Township for all costs of this township enforcing this moratorium, including litigation costs and reasonable attorneys fees.
10. This interim ordinance and moratorium will expire on September 10, 2013, unless the Board of Supervisors terminates this interim ordinance and moratorium earlier than such expiration date.

Dated: September 11, 2012



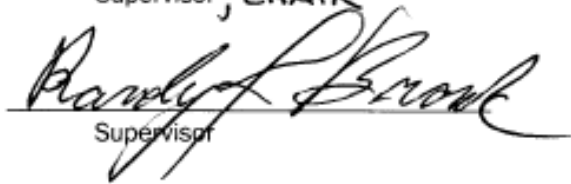
Attest:

  
Township Clerk

YUCATAN TOWNSHIP  
BOARD OF SUPERVISORS:



Supervisor, CHAIR



Supervisor

Supervisor

## X. Appendix F

### Additional resources on frac sand mining and township authority

The Minnesota Environmental Quality Board maintains a “**Library of Local Government Ordinances & Permits Regulating Silica Sand.**” It provides a wide variety of examples of how townships and other local governments have chosen to address frac sand operations. Available online at <https://www.eqb.state.mn.us/ordinances>

“**Legal and Practical Considerations in Support of a Zoning Ban on Frac Sand Operations in Winona County: A Review of Minnesota Statutes, Case Law, and County Policy.**” Fatehi, Leili, JD. Prepared for the Land Stewardship Project, March 2016. Available online at [http://landstewardshipproject.org/repository/1/1730/winona\\_county\\_frac\\_legal\\_review.pdf](http://landstewardshipproject.org/repository/1/1730/winona_county_frac_legal_review.pdf)

This comprehensive report was prepared specifically to provide legal documentation for a frac sand ban in Winona County. It includes an extensive analysis of various harmful impacts of frac sand operations in the categories of water quality and ecological impacts, transportation impacts, economic impacts, agricultural impacts, and air quality impacts. It discusses the clear differences between frac sand operations and other types of mining.

“**Final Report on the Public Health Impacts of Non-Metallic Industrial Sand Mining in Trempealeau County.**” Miller, Sally, John Aasen, Dave Larson, Sherry Rhoda, Paul Winey, Cristeen Custer, Liz Feil, Pam Nelson, Ellen Ott Gundersen, Tim Zeglin, Lois Taylor, Dr. Sarah Slaby. September 8, 2014. Available online at <http://www.trempeleaucounty.com/tchome/landmanagement/documents/informational/PublicHealthImpactsOfNMISMinTrempealeauCounty.pdf>

This extensive study was prepared by a committee at the direction of the Trempealeau County, Wis., Board of Supervisors, during that county’s moratorium on new frac sand operations. As explained in the Executive Summary, “The committee was directed to examine six key areas: water quality, air quality, light pollution, sound pollution, radon and radioactivity, and the ability to maintain stable communities. The research question the committee formulated was ‘What impacts does non-metallic industrial sand mining (NMISM) have on the health and welfare of the citizens of Trempealeau County?’” In five of the six key areas – all except radon and radioactivity – the study’s findings include already occurring and/or potential negative impacts on residents and communities due to industrial sand operations.

“**Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects.**” Minnesota Environmental Quality Board. March 19, 2014. Available online at <https://www.eqb.state.mn.us/sites/default/files/documents/Tools%20for%20Local%20Govt%20approved%20March%202019.pdf>

This document was prepared by the Environmental Quality Board (EQB) with assistance from other Minnesota state agencies, including the Department of Natural Resources, the Pollution Control Agency, the Department of Health, the Department of Transportation, and the Department of Agriculture. Throughout the 193-page document are extensive lists of the potential impacts of silica sand projects. It is intended to assist local governments that are determining how to address possible frac sand operations in their communities.

## XI. Appendix G

### Animal Unit Definitions & Information About the Size of Livestock Operations in Minnesota

#### Animal Unit (AU) Definitions (From MPCA 7020 Rules<sup>17</sup>)

Dairy Cow (over 1,000 lbs)	1.4 AU
Beef Cow	1.0 AU
Hogs	
• Over 300 lbs	0.4 AU
• 55-300 lbs	0.3 AU
• Under 55 lbs	0.05 AU

#### Livestock Farms by Animal Unit (AU) Size in Minnesota

In Minnesota, feedlots located in shoreland with more than 10 animal units and feedlots outside of shoreland with more than 50 animal units must register with the MPCA<sup>18</sup>. The below information is based on feedlots registered with the MPCA in Minnesota, updated September 2018<sup>19</sup>.

Animal Units	No. of Operations	% of Total
10-49 AU	5614	23%
50-99 AU	5765	24%
100-299 AU	7345	31%
300-499 AU	1699	7%
500-999 AU	2565	11%
Over 1,000 AU	963	4%
	23,951	
<b>78% of all livestock operations in Minnesota are less than 300 animal units. Of operations over 100 animal units, 72% are under 500 animal units.</b>		
(300 animal units=214 dairy cows, 1,000 hogs between 55 & 300 lbs, or 300 beef cattle)		

#### Types of livestock operation by size in Minnesota<sup>19</sup>

Information on the size of dairy farms in Minnesota was calculated from a publicly available list that can be requested from the Minnesota Department of Agriculture (MDA). Information on the size of beef cattle operations and hog operations was calculated from the publicly available list of Minnesota feedlots registered with the MPCA<sup>18</sup>.

Dairy Farms (2018)						
1-29 cows	30-49 cows	50-99 cows	100-199 cows	200-499 cows	500+ cows	Total
193	618	1,410	364	316	92	2,993
6.4%	20.6%	47.1%	12.2%	10.5%	3.1%	
<b>86.4% of dairy farms have less than 200 cows.</b>						

**XII. Appendix H—Size of Livestock Operations in Minnesota—*continued*...**

<b>Farms with Beef Cattle (2018)</b>				
1-49 head	50-99 head	100-499 head	500+ head	Total
3,504	3,225	4,639	895	12,263
29%	26%	38%	7%	
<b><i>55% of beef cattle operations have less than 100 head.</i></b>				

<b>Hog Farms (2018)</b>						
1-99 head	100-499 head	500-999 head	1,000 to 1,999 head	2,000 to 4,999 head	5,000+ head	
113	772	728	789	2228	315	4,945
2%	16%	15%	16%	45%	6%	
<b><i>33% hog farms have less than 1,000 head.</i></b>						

## **XII. Appendix H**

### **List of Studies & Reports Detailing Harm of Large-Scale Livestock Operations to Rural Communities, the Environment & Family Farms**

#### **Human Health**

☐ Campagnolo, Enzo R.; Rubin, Carol S. Report to the State of Iowa Department of Public Health on the Investigation of the Chemical and Microbial Constituents of Ground and Surface Water Proximal to Large-Scale Swine Operations, Oct./Dec. 1998, Centers for Disease Control & Prevention, Atlanta, Ga.

☐ Homme, Paul. "Hydrogen Sulfide Test Results in Renville County, Minnesota," Land Stewardship Project, May 1996

☐ Land Stewardship Project. Antibiotics, Agriculture & Resistance. December 2002. Minneapolis, Minn. [www.landstewardshipproject.org/pr/2002/newsr\\_021218.html](http://www.landstewardshipproject.org/pr/2002/newsr_021218.html)

☐ Minnesota Department of Health. "Analysis of Citizen Hydrogen Sulfide Monitoring, May, 1996," official analysis, July 16, 1996. Saint Paul, Minn.

☐ Minnesota Pollution Control Agency. "Subject: Odor Investigation at ValAdCo," office memorandum, May 9, 1996. Saint Paul, Minn.

☐ Rapaport, Diane. "Warning: Hydrogen Sulfide," Water Engineering & Management, Jan. 1990, Vol. 137, No. 1, p. 36

☐ Thompson, Paul E. "A narrative of patient symptoms reported by Julie Jansen, Olivia, Minn., in September 1995," Sept. 26, 1995

☐ Yale Environmental Protection Clinic. Controlling Odor and Gaseous Emission Problems from Industrial Swine Facilities: A Handbook for All Interested Parties, Kerr Center for Sustainable Agriculture, Poteau, Okla., 1998, 65 pages

#### **Environmental Pollution**

☐ Crawford, Nicholas. Leakage and Sinkhole Collapses Under Hog Waste Lagoons in Kentucky, Center for Cave and Karst Studies, Department of Geography & Geology, Western Kentucky University, Aug. 5, 1998

☐ Jackson, Laura L. (Department of Biology, University of Northern Iowa); Keeney, Dennis R. (Leopold Center for Sustainable Agriculture). Analysis of Regional Manure Management Plans to Assess the Potential for Nonpoint Source Pollution in North-Central Iowa: Nutrient Loading and Policy Implications, April 1999



## **XII. Appendix H—Harm of Large-Scale Livestock Operations —*continued*...**

☐ Kenney, D., R. Levins, J. Schimmel. 2002. Phosphorus Balance in Minnesota Feedlot Permitting. In Generic Environmental Impact Statement on Animal Agriculture. Minnesota Environmental Quality Board. [www.mnplan.state.mn.us/eqb/geis/TWP\\_Economic.pdf](http://www.mnplan.state.mn.us/eqb/geis/TWP_Economic.pdf).

☐ Land Stewardship Project. “Anatomy of a Manure Spill.” Land Stewardship Letter. August/September 1997, Vol. 15, No. 4. Minneapolis, Minn. [www.landstewardshipproject.org/news-lsl.html](http://www.landstewardshipproject.org/news-lsl.html)

☐ Wright, Andrew G. “A Foul Mess: EPA takes aim at factory farms, the No. 1 water polluter in the U.S.,” Engineering News-Record, Oct. 4, 1999, p. 26

### **Economic Health**

☐ Bartlett, Donald L. & James B. Steele. “The Empire of the Pigs: A Little-Known Company is a Master at Milking Governments for Welfare,” Time, Nov. 30, 1998, pages 52-64; website: [www.time.com](http://www.time.com)

☐ Chism, John W.; Levins, Richard A. “Farm Spending and Local Selling: How Do They Match Up?” Minnesota Agricultural Economist, No. 676, 1994

☐ Goldschmidt, Walter Rochs. As You Sow: three studies on the social consequences of agribusiness, Allanheld, Osmun, Montclair, N.J., 1978 (part of this study was first published in 1947)

☐ Gomez, Miguel and L. Zhang. “Impacts of Concentration in Hog Production on Economic Growth in Rural Illinois: An Economic Analysis.” April 2000. Illinois State University, Normal, Ill. [www.factoryfarm.org/docs/Gomez.pdf](http://www.factoryfarm.org/docs/Gomez.pdf)

☐ Ikerd, John. “Economic Impacts of Contract Hog Production in Missouri: An Alternative Viewpoint,” Issues in Sustainable Agriculture, Sustainable Agriculture Systems Program, University of Missouri, March-April 1994

☐ Land Stewardship Project. Killing Competition With Captive Supplies: A special report on how meat packers are forcing independent family hog farmers out of the market through exclusive contracts, April 1999. Minneapolis, Minn.

☐ Love, Patricia Weir. The Impact of Changes in Dairy Farming on a Local Economy: A Case Study, master’s degree thesis, University of Minnesota Department of Applied Economics, 1995

☐ Welsh, Rick and Thomas Lyson. “Anti-Corporate Farming Laws, the Goldschmidt Hypothesis and Rural Community Welfare.” Paper presented at the annual meeting of the Rural Sociological Society, August 2001. [www.i300.org/anti\\_corp\\_farming.htm](http://www.i300.org/anti_corp_farming.htm)

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- <sup>2</sup> Thu, K., K. Donham, R. Ziegenhorn, S. Reynolds, P.S. Thornen, P. Subramanian, P. Whitten, J. Stookesberry. 1999. Report prepared for the North Carolina Department of Health and Human Services, Division of Public Health. May 9. [www.iafu.org/ifuef/health.html#thu](http://www.iafu.org/ifuef/health.html#thu).
- <sup>3</sup> Wing, S., S. Wolf. 1999. Intensive Livestock Operations, Health and Quality of Life Among Eastern North Carolina Residents. Report prepared for the North Carolina Department of Health and Human Services, Division of Public Health. May 9. [www.iafu.org/ifuef/health.html#thu](http://www.iafu.org/ifuef/health.html#thu).
- <sup>4</sup> Schiffman, et al. 1995.
- <sup>5</sup> Rapaport, Diane. "Warning: Hydrogen Sulfide," *Water Engineering & Management*, Jan. 1990, Vol. 137, No. 1, p. 36
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- <sup>9</sup> Minnesota Department of Health. 1996
- <sup>10</sup> Union of Concerned Scientists. 2001. *Hogging It! Estimates of Antimicrobial Abuse in Livestock*. January. [www.ucsusa.org/food\\_and\\_environment/antibiotics\\_and\\_food/hogging-it-estimates-of-antimicrobial-abuse-inlivestock.html](http://www.ucsusa.org/food_and_environment/antibiotics_and_food/hogging-it-estimates-of-antimicrobial-abuse-inlivestock.html).
- <sup>11</sup> Land Stewardship Project. 2002. *Antibiotics, Agriculture & Resistance*. July. [www.landstewardshipproject.org/pr/2002/newsr\\_021218.html](http://www.landstewardshipproject.org/pr/2002/newsr_021218.html)
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