

City of Cuyuna, Minnesota

ORDINANCE NO. 905

Shoreland

May 6, 1994

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AMENDED ORDINANCE FOR THE MANAGEMENT OF
SHORELAND AREAS OF THE
COMMUNITY OF CUYUNA
AMENDED SHORELAND ORDINANCE

By Law Offices of Michael C. Bender
May, 6 1994

(Amending First Shoreland Ordinance passed by the City Council on June 12,
1985 amending Zoning Ordinance Passed on June 9, 1983)

Section 1.0 – STATUTORY AUTHORIZATION AND POLICY
(FORMERLY “GENERAL PROVISIONS”)

1.1 Statutory Authorization

This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F, Minnesota Regulations, parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

1.2 Policy

The uncontrolled use of shorelands of the Community of Cuyuna, Minnesota, affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the Community of Cuyuna.

1.3 Statement of Purpose

To achieve the policies described in Section 1.2 and to:

1.31 Designate suitable land use zoning districts compatible with the Shoreland management Classification;

1.32 Regulate the minimum dimensions for the size and length of water frontage of lots suitable for building sites;

1.33 Regulate the placement of structures in relation to shoreland and roads;

- 1.34 Regulate the amount of impervious surface be allowed on each lot;
- 1.35 Regulate the type and placement of sanitary and waste disposal facilities;
- 1.36 Regulate alterations of the natural shorelands in municipalities to preserve natural drainageways and natural topography of the terrain;
- 1.37 Regulate placement of roads and parking areas in shoreland areas;
- 1.38 Regulate the subdivision of shoreland areas in municipalities; and
- 1.39 Provide for the enforcement and administration of municipal shoreland management ordinances; the Governing body of the City of Cuyuna, Minnesota, effects the following ordinances.

SECTION 2.0 – GENERAL PROVISIONS AND DEFINITIONS

2.1 Jurisdiction

The provisions of this ordinance shall apply to the shorelands of the public water bodies as classified in Section 4.0 of this ordinance. Pursuant to Minnesota Regulations, Parts 6120.2500 - 6120.3900, no lake, pond or flowage less than 5 acres in municipalities or 25 acres in size in unincorporated areas need be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this ordinance.

2.2 Compliance

The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste disposal facilities; the filling, grading, lagooning, or dredging of any shoreland areas; the cutting of vegetation; and the subdivision of lots shall be in full compliance with the terms of this or other ordinances and applicable regulations, construction of buildings and sewage disposal systems shall require a permit unless otherwise expressly excluded by the requirements of this ordinance.

2.3 Enforcement

2.31 This ordinance shall be administered and enforced by the Zoning Administrator, who is hereby designated the enforcing officer.

2.32 In the event of a violation or a threatened violation of this ordinance, the Governing Body or any member thereof, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, correct or abate such violations or threatened violations. It shall be the duty of the City Attorney to institute such action.

2.33 Any taxpayer or taxpayers of the City may institute mandamus proceedings in the District Court to compel Specific performance by the proper official or officials of any duty required by this ordinance.

2.34 Any person, firm or corporation who shall

- (1) Violate any of the provisions hereof;
- (2) Make any false statement in any document required to be submitted under the provisions hereof; or

- (3) Fail to comply with any of the requirements of this ordinance (including violations of conditions and safeguards established in connection with grants of variances or conditional uses);

shall be guilty of a misdemeanor and shall be punished as defined by the law pertaining thereto, or by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not exceed ninety (90) days or both. Each day that a violation continues shall constitute a separate offense.

2.4 Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by Minnesota Statutes.

Where this ordinance imposes greater restrictions than other ordinances of the City, this ordinance shall prevail.

2.5 Severability

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

2.6 Abrogation and Greater Restrictions

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

2.7 Definitions

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

2.711 Accessory Structure or Facility. “Accessory structure” or “facility” means any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

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

- (1) Part or all of the feature is located in a shoreland area;
- (2) The slope rises at least 20 feet above the ordinary high water level of the waterbody;
- (3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- (4) The slope must drain toward the waterbody.

2.713 Bluff Impact Zone. “Bluff impact zone” means a bluff and land located within 30 feet from the top of a bluff.

2.714 Boathouse. “Boathouse” means a structure designed and used solely for the storage of boats or boating equipment.

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

2.716 Commercial Planned Unit Developments. “Commercial planned unit developments” are typically uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service—oriented, E.g., hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service—oriented activities (for reference; prohibited in Cuyuna).

2.717 Commercial Use. “Commercial use” means the principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.

2.718 Commissioner. “Commissioner” means the commissioner of the Department of Natural Resources.

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

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

2.721 Duplex, Triplex, and Quad. “Duplex,” “Triplex,” and “Quad” means a dwelling structure on a single lot, having two, three, and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, living, and sanitation facilities (for reference; prohibited in Cuyuna).

2.712 Dwelling Site. “Dwelling site” means a designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

2.723 Dwelling Unit. “Dwelling unit” means any structure or portion of a structure, or other shelter designed as short- or long—term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, and resort rooms and cabins.

2.724 Extractive Use. “Extractive use” means the use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, sections 93.44 to 93.51.

2.725 Forest Land Conversion. “Forest land conversion” means the clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

2.726 Guest Cottage. “Guest cottage” means a structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

2.727 Hardship. “Hardship” means the same that term is defined in Minnesota Statutes, Chapter 394 (for counties) or Chapter 462 (for municipalities).

2.728 Height of Building. “Height of building” means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.

2.729 Industrial Use. “Industrial use” means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

2.730 Intensive Vegetation Clearing. “Intensive vegetation clearing” means the removal of 50% or more of trees or shrubs in a contiguous patch, strip, row, or block.

2.731 Lot. “Lot” means a parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from the other parcels or portions by said description for the purpose of sale, lease, or separation. For the purposes of these regulations, a lot shall be considered to be an individual building site which shall be occupied by no more than one principal structure equipped with sanitary facilities.

2.732 Lot Width. “Lot width” means the shortest distance between lot lines measured at the midpoint of the building line.

2.732A Non-Riparian. That land not directly abutting a lake, river, tributary or stream but still regulated by this ordinance because of its proximity to shore land

2.733 Nonconformity. “Nonconformity” means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

2.734 Ordinary High Water Level. “Ordinary high water level” means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

2.735 Planned Unit Development. (prohibited in Cuyuna) “Planned unit development” means a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses. These developments may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses.

2.736 Public Waters. “Public waters” means any waters as defined in Minnesota Statutes, section 103G.005, and 645.44, subdivision 8a.

2.737 Riparian Rights. “Riparian rights” is defined as the rights of the owners of lands on the banks of watercourses, relating to the water, its use, ownership of soil under the stream, accretions, etc. Term is generally defined as the right which every person through whose land a natural watercourse runs has to benefit of stream as it passes through his land for all useful purposes to which it may be applied.

2.737A Riparian. That land which directly abuts a lake, river, tributary or stream.

2.738 Semipublic Use. “Semipublic use” means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

2.739 Sensitive Resource Management. “Sensitive resource management” means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

2.740 Setback. “Setback” means the minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.

2.741 Sewage Treatment System. “Sewage treatment system” means a septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Section 5.8 or this ordinance.

2.742 Sewer System. “Sewer system” means pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

2.743 Shore Impact Zone. “Shore impact zone” means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

2.744 Shoreland. “Shoreland” means land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded

by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

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

2.746 Steep Slope. “Steep slope” means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site’s soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance, Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

2.747 Structure. “Structure” means any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

2.748 Subdivision. “Subdivision” means land that is divided for the purpose of sale, rent, or lease.

2.7481 Substandard Use. Substandard use means any use of shorelands existing prior to the date of enactment of this ordinance which is permitted within the applicable zoning district but does not meet the minimum lot area and length of water frontage, structure setback, or other dimensional standards of the ordinance.

2.749 Surface Water—oriented Commercial Use. “Surface water—oriented commercial use” means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

2.750 Toe of the Bluff. “Toe of the bluff” means the lower point of a 50-foot segment with an average slope exceeding 18 percent.

2.751 Tip the Bluff. “Tip of the Bluff” means the higher point of a 50-foot segment with an average slope exceeding 18 percent.

2.752 Variance. “Variance” means the same as that term is defined or described in Minnesota Statutes, Chapter 394 (for counties) or Chapter 462 (for municipalities).

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

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

SECTION 3.0 – ADMINISTRATION

3.1 Permits Required

3.11 A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks, moving, and signs), the installation or alteration of sewage treatment systems, and those grading and filling activities not exempted by Section 5.3 of this ordinance. Application for a permit shall be made to the zoning administrator on the forms provided. The application shall include the necessary information so that the zoning administrator can determine the sites suitability for the intended use and that a compliant sewage treatment system will be provided.

3.111 Permit fees and inspections as may be established by resolution of the Governing Body shall be collected by the Zoning Administrator for deposit with the City and credited to the General Revenue Fund.

3.2 Certificate of Zoning Compliance

3.21 The zoning administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Section 3.1 of this ordinance. This certificate will specify that the use of land conforms to the requirements of this ordinance. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this ordinance and shall be punishable as provided in Section 2.3 of this ordinance.

3.22 Zoning Administrator. The governing body may appoint to the office of the Zoning Administrator, established June 12, 1985, such employee or employees of the City as it may deem proper. The term of office of the Zoning Administrator shall be indefinite and shall terminate at the pleasure of the Governing Body. The duties of the zoning administrator are as follows. The Zoning Administrator shall:

- (1) Act as building inspector for the city;
- (2) Enforce and administer the provisions of this ordinance;
- (3) Issue permits and certificates of compliance and maintain records thereof;
- (4) Receive and forward to the Governing Body all applications for conditional use permits;

- (5) Receive and forward all applications and petitions for matters to come before the Board of Adjustment;
- (6) Receive and forward to the Governing Body all applications for amendments to this ordinance;
- (7) Forward notices of public hearings to consider variances, amendments or conditional uses to the commissioner of Natural Resources at least ten (10) days prior to such hearing;
- (8) Forward amendments and final decisions granting variances or conditional uses under this ordinance to the Commissioner of Natural Resources within ten (10) days of final action or amendment;
- (9) Inspect all construction and development to insure that the standards of this ordinance are being complied with; and
- (10) Have the authority to enter upon such lands and premises as necessary to insure that the standards of this ordinance are being complied with.

3.3 Variances

3.31 Variances may only be granted in accordance with Minnesota Statutes, Chapter 462. A variance may not circumvent the general purposes and intent of this ordinance. No variance may be granted for property to be subdivided from larger property. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the board of adjustment must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties, and provided that:

3.311 The condition causing the hardship is unique to that property;

3.312 The variance is proved necessary in order to secure for the applicant a right or rights are enjoyed by other owners in the same area or district;

3.313 The granting of the variance will not be contrary to management policies of the area or district; and

3.314 A variance fee shall be charged. The amount to be set by resolution of the Council.

3.32 The board of adjustment shall hear and decide requests for variances in accordance with the rules that it has adopted for the conduct of business. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Section 3.42 below shall also include the board of adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

3.33 For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

3.4 Notifications to the Department of Natural Resources

3.41 Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

3.42 A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.

SECTION 4.0 – SHORELAND CLASSIFICATION SYSTEM AND LAND USE DISTRICTS

4.1 Shoreland Classification System

The public waters of Cuyuna have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the protected Waters Inventory Map for Crow Wing County, Minnesota.

4.11 The shoreland area for the waterbodies listed in sections 4.12 and 4.13 shall be as defined in section 2.744 and as shown on the Official Zoning Map.

4.12 Lakes

A.	<u>Natural Environment Lakes</u>	Protected Waters <u>Inventory I.D.#</u>
	Mud Lake	18-040
	Clinker Lake	18-137
B.	<u>Recreational Development Lakes</u>	Protected Waters <u>Inventory I.D.#</u>
	Agate Lake	18-060
C.	<u>General Development Lakes</u>	Protected Waters <u>Inventory I.D.#</u>
	East Rabbit Lake	18-093
	West Rabbit Lake	18-093

4.2 Land Use District Descriptions

4.21 Criteria for Designation. The land use districts in Section 4.22, and the delineation of a land use district’s boundaries on the Official Zoning Map, must be consistent with the goals, policies, and objectives of the comprehensive land use plan (when available) and the following criteria, considerations, and objectives:

A. General Considerations and Criteria for All Land Uses:

- (1) preservation of natural areas;
- (2) present ownership and development of shoreland areas;

- (3) shoreland soil types and their engineering capabilities;
- (4) Topographic characteristics;
- (5) vegetative cover;
- (6) in-water physical characteristics, values, and constraints;
- (7) recreational use of the surface water;
- (8) Road and service center accessibility;
- (9) socioeconomic development needs and plans as they involve water and related land resources;
- (10) the land requirements of industry which, by its nature requires location in shoreland areas; and
- (11) the necessity to preserve and restore certain areas having significant historical or ecological value.

B. Factors and Criteria for Planned Unit Developments:

[Planned Unit Developments are prohibited by City of Cuyuna; see SECTION 8.0. Reserved for future use.]

4.22 Land Use District Descriptions. The land use districts provided below, and the allowable land uses therein for the given classifications of waterbodies, shall be properly delineated on the Official Zoning Map for the shorelands of this community. These land uses therein for the given classifications of waterbodies, shall be properly delineated on the Official Zoning Map for the shorelands of this community. These land use districts are in conformance with the criteria specified in Minnesota Regulation, Part 6120. 3200 , Subp . 3:

A. Land Use Districts for Lakes

General Development Lakes (Rabbit)	Recreational Development Lakes (Agate)	Natural Environment Lakes (Mud/Clinker)
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(1) Special Protection District — Uses

Forest Management Sensitive Resource	P	P	P
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Management	P	P	P
Agricultural and Pasture	N	N	N
Agricultural Feedlots	N	N	N
Parks and Historical Sites	C	C	C
Extractive Use	N	N	N
Single Residential	C	C	C
Mining of Metallic Minerals and Peat	C	C	C

(2) Residential District –R-1 Uses

Single Residential	P	P	P
Semipublic	C	C	C
Parks and Historical Sites	C	C	C
Extractive Use	N	N	N
Duplex, Triplex, Quad Res.	N	N	N
Forest Management	P	P	P
Mining of Metallic Mineral and Peat	C	C	C

(2) High Density Residential District —R—2 Uses {No High Density Shorelands in Cuyuna}

Key: N = Not permitted
C = Conditional
P = Permitted

- B. Land Use Districts for Rivers and Streams. The only Rivers and Streams in Cuyuna are classified as Tributary, and districting shall conform to Minnesota Regulation, Part 6120.3200, Subp. 3.

4.23 Use and Upgrading of Inconsistent Land Use Districts:

- A. The land use districts adopted previous to this ordinance by the City of Cuyuna, as they apply to Shoreland areas, and their delineated boundaries on the official Zoning Map, are consistent with the land use district designation criteria specified in Section 4.22 herein.

- B. When a revision is proposed to an inconsistent land use district provision, the following additional criteria and procedures shall apply:
- (1) For Lakes. When a revision to a land use district designation of a lake is considered, the land use district boundaries and use provisions therein for all the shoreland areas within the jurisdiction of this ordinance on said lake must be revised to make them substantially compatible with the framework in Sections 4.21 and 4.22 of this ordinance.
 - (2) For Rivers and Streams. When a revision to a land use district designation on a river or stream is proposed, the land use district boundaries and the use provisions therein for all shoreland on both sides of the river or stream within the same classification within the jurisdiction of this ordinance must be revised to make them substantially compatible with the framework in Sections 4.21 and 4.22 of this ordinance. If the same river classification is contiguous for more than a five—mile segment, only the shoreland for a distance of 2.5 miles upstream and downstream, or to the class boundary if closer, need be evaluated and revised.
- C. When an interpretation question arises about whether a specific land use fits within a given “use” category, the interpretation shall be made by the Board of Adjustment. When a question arises as to whether a land use district’s boundaries are properly delineated on the Official Zoning Map, this decision shall be made by the governing body, the city council.
- D. When a revision is proposed to an inconsistent land use district provision by an individual party or landowner, this individual party or landowner will only be responsible to provide the supporting and/or substantiating information for the specific parcel in question. The governing body will direct the Zoning Administrator to provide such additional information for this waterbody as is necessary to satisfy Items A and B.
- E. The governing body must make a detailed finding of fact and conclusion when taking final action that this revision, and the upgrading of any inconsistent land use district designations on said waterbody, are consistent with the enumerated criteria and use provisions of Section 4.2.

SECTION 5.0 – ZONING AND WATER SUPPLY/SANITARY PROVISIONS

5.1 Lot Area and Width Standards

The lot area (in square feet and lot width standards) created after the date of enactment of this ordinance for the lake and river/stream classifications are the following (For non-riparian property located within two or more lake classifications, the requirements of the more restrictive classification will apply.):

5.1.1 Unsewered Lakes

A. Natural Environment (Mud & Clinker):

	<u>Tier I</u>		<u>Tier II</u>	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single	110,000	200	175,000	300
Single w/Guest Cottage	155,000	400	200,000	450

B. Recreational Development (Agate):

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single	60,000	175	110,000	265
Single w/Guest Cottage	110,000	265	150,000	300

C. General Development (Rabbit):

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single	60,000	150	110,000	265
Single w/Guest Cottage	110,000	265	150,000	300

5.12 Sewered Lakes (Cuyuna has no sewered Lakes).

5.13 Additional Special Provisions.

A. Residential subdivisions with dwelling unit densities exceeding those in the tables in Sections 5.11 and 5.12 are not allowed.

- B. One guest cottage may be allowed on lots meeting or exceeding the appropriate lot area and width dimensions presented for reference in Sections 5.11-5.12, provided the following standards are met:
- (1) for lots exceeding the minimum lot dimensions of lots, the guest cottage must be located within the smallest sized lot that could be created including the principal dwelling unit;
 - (2) a guest cottage must not cover more than 700 square feet of land surface and must not exceed 15 feet in height; and
 - (3) a guest cottage must be located or designed to reduce its visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer leaf—on conditions.
- D. Lots intended as controlled accesses to public waters or as recreation areas for use by owners of nonriparian lots within subdivisions are permissible and must meet or exceed the following standards:
- (1) they must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots.
 - (2) If docking, mooring, or over-water storage of more than six (6) watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

Controlled Access Lot Frontage Requirements:

<u>Ratio of lake size to shore length</u> (acres/mile)	<u>Required increase in frontage</u> (percent)
Less than 100	25
100 - 200	20
201 - 300	15
301 - 400	10
Greater than 400	55

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

5.2 Placement, Design, and Height of Structures.

5.21 Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered with a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows:

- A. Structure and On—Site Sewage System Setbacks (in feet) from Ordinary High Water Level.*, **

		<u>Setbacks*, **</u>
<u>Classes of Public Waters</u>	<u>Structures Unsewered</u>	<u>Sewage Treatment System (Unsewered)</u>

Lakes

Natural Environment	200	200
Recreational Development	100	100
General Development	75	75

Rivers

Remote Forested and Transition Tributary	200 150 100	200 150 100
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*One water—oriented accessory structure designed in accordance with Section 5.22 of this ordinance may be set back a minimum distance of twenty (20) feet from the ordinary high water level.

**Setback of septic system from adjacent property line 10 feet; setback of structure from adjacent property line 20 feet.

B. Additional Structure Setbacks. The following additional structure setbacks apply, regardless of the classification of the waterbody:

<u>Setback From:</u>	<u>Setback (in feet)</u>
(1) top of bluff	50
(2) unplatted cemetery	50
(3) right—of—way line of federal, state or county highway	50
(4) right—of—way line of town road, public street, or other roads or streets not classified; and	30
(5) adjoining boundary line.	20

C. Buff Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

D. Uses Without Water—oriented Needs. Uses without water—oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set

back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf—on conditions.

- E. Structures must be placed outside of a floodway as defined in Minnesota Statutes, Section 104.02.
- F. Decks or uncovered porches. Additions for decks or uncovered porches shall be subject to the following setbacks:
 - (1) All additions for decks, uncovered porches or patios to homes built after the adoption of the Shoreland ordinance shall comply with the aforementioned setback.
 - (2) All additions for decks, uncovered porches or patios to homes built before the adoption of the Shoreland ordinance shall comply with the following:
 - (a) Deck encroachments lakeward beyond existing building line will be considered only after all other alternative locations and designs have been evaluated and found to be impractical.
 - (b) The maximum allowable deck, uncovered porch, or patio lakeward of the building line shall not exceed fifteen percent (15%) of the structure's existing setback. The maximum deck extension shall not exceed 12 feet. The minimum setback for any deck, uncovered porch or patio shall be no less than fifty percent (50%) of the required setback distance for each lake classification (NE, RD or GD).
 - (c) Any deck or uncovered porch which is constructed closer than the required setback from the normal ordinary water elevation should be constructed of wood and be stained or painted in earth tones.
 - (d) Decks, porches or patios shall not be screened in or roofed under any circumstances.

5.22 Design Criteria for Structures.

- A High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor,

including basement, is placed or flood— proofed must be determined as follows:

- (1) for lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;
- (2) for rivers and streams, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with parts 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and
- (3) water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

B. Water-oriented Accessory Structures. Each lot may have one water-oriented accessory structure not meeting the normal structure setback in Section 5.21 of this ordinance if this water-oriented accessory structure complies with the following provisions:

- (1) the structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 200 square feet. Detached decks must not exceed eight feet above grade at any point;
- (2) the setback of the structure or facility from the ordinary high water level must be at least twenty feet;
- (3) the structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf—on conditions;

- (4) the roof may not be used as a deck;
- (5) the structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and
- (6) as an alternative for general development and recreational development waterbodies, water— oriented accessory structures used solely for watercraft storage, and including storage of related boating and water—oriented accessory structures used solely for watercraft storage, and including storage of related boating and water—oriented sporting equipment, may occupy an area up to 250 square feet provided the maximum width of the structure is 20 feet as measured parallel to the configuration of the shoreline.
- (7) Additionally, boathouses must have eight inch clean sand fill under slab;
- (8) Twelve inches deep, eighteen inches wide concrete footing with two ½-inch re-rod continuous around perimeter;
- (9) If blocks are required, anything over four rows high must be tied back into slab with one-half—inch re—rod and cores filled solid with re-rod and concrete four inches on center;
- (10) Should be of standard wood frame or block construction;
- (11) Total height to gable of reverse gable not to exceed twelve feet to peak; and
- (12) Flat roofed boathouses will not exceed nine feet from finished floor to top of finished roof.

C. Stairways, Lifts, and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

- (1) stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open—space recreational properties, and planned unit developments;

- (2) landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open—space recreational properties, and planned unit developments;
- (3) canopies or roofs are not allowed on stairways, lifts, or landings;
- (4) stairways, lifts and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;
- (5) stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf—on conditions, whenever practical; and
- (6) facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of subitems (1.) to (5) are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.

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

E. Steep Slopes. The zoning administrator must evaluate possible soil erosion impact and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf—on vegetation.

5.23 Height of Structures. All structures in residential districts must not exceed 25 feet in height.

5.3 Shoreland Alterations

Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.

5.31 Vegetation Alterations.

A. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 5.4 of this ordinance are exempt from the vegetation alteration standards that follow. A ten (10) foot buffer, however, must be allowed to remain along each side of the line between adjacent properties.

B. Removal or alteration of vegetation except for forest management uses as regulated in Sections 5.62 and 5.63, respectfully, is allowed subject to the following standards:

(1) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.

(2) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water-- oriented accessory structures or facilities, provided that:

(a) the screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions is not substantially reduced;

(b) along rivers, existing shading of water surfaces is preserved;

(c) the above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards; and

(d) two - (2-) inch diameter or greater trees remain as screening.

5.32 Topographic Alterations/Grading and Filling

- A. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways. Resulting land must utilize natural contours and not interfere with natural drainageways.
- B. Public roads and parking areas are regulated by Section 5.4 of this ordinance.
- C. Notwithstanding Items A. and B. above, a grading and filling permit will be required for:
 - (1) the movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
 - (2) the movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.
- D. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
 - (1) Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland*:
 - (a) sediment and pollutant trapping and retention;
 - (b) storage of surface runoff to prevent or reduce flood damage;
 - (c) fish and wildlife habitat;
 - (d) recreational use;
 - (e) shoreline or bank stabilization; and
 - (f) noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.

*This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised.

- (2) Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
- (3) Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible, not to exceed 18 months from date of permit;
- (4) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;
- (5) Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
- (6) Fill or excavated material must not be placed in a manner that creates an unstable slope;
- (7) Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued for continued slope stability and must not create finished slopes of 30 percent or greater;
- (8) Fill or excavated material must not be placed in bluff impact zones;
- (9) Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, section 103G.245;
- (10) Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties;
- (11) Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the

ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet; and

(12) Alterations of topography must not result in more than three feet of elevation change.

E. Connections to public waters. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the commissioner has approved the proposed connection to public waters.

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

5.41 Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

5.42 Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimized adverse impacts.

5.43 Public and private watercraft access ramps, approach roads access—related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met. For private facilities, the grading and filling provisions of Section 5.32 of this ordinance must be met.

5.5 Stormwater Management.

The following general and specific standards shall apply:

5.51 General Standards:

- A. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
- B. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized

and protected as soon as possible and facilities or methods used to retain sediment on the site.

- C. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and manmade materials and facilities.

5.52 Specific Standards:

- A. Impervious surface coverage of lots must not exceed 20 percent of the lot area.
- B. When constructed facilities are used for stormwater management documentation must be provided by a qualified individual they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.
- C. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

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

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

- A. Commercial, Industrial, Public, and Semipublic Uses are prohibited in Cuyuna.

5.62 Agricultural Use Standards. None. Agricultural uses are not allowable in shorelands of City of Cuyuna.

5.63 Forest Management Standards. The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Nonpoint Source Pollution Assessment—Forestry and the provisions of Water Quality in Forest management “Best Management Practices in Minnesota.”

5.64 Extractive Use Standards. None. Extractive uses are not allowable in shorelands of City of Cuyuna.

5.65 Mining of Metallic Minerals and Peat. Mining of metallic minerals and peat, as defined in Minnesota Statutes, Sections 93.44 to 93.51, is prohibited.

5.7 Conditional Uses

Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established community—wide. The following additional evaluation criteria and conditions apply within the shoreland areas:

5.71 Evaluation criteria. A thorough evaluation of the waterbody and the topographic, vegetation, and soil conditions on the site must be made to ensure:

- (1) the prevention of soil erosion or other possible pollution of public waters, both during and after construction;
- (2) the visibility of structures and other facilities as viewed from public waters is limited;
- (3) the site is adequate for water supply and on—site sewage treatment; and
- (4) the types, uses and numbers of watercraft that the project will generate area compatible in relation to the suitability of public waters to safely accommodate these watercraft.

5.7-7.31. Application for a Conditional Use Permit. Any conditional use in this ordinance shall be permitted only upon application to the Zoning Administrator and issuance of a conditional use permit by the Governing Body.

5.7-7.32 Standards Applicable to All Conditional Uses. In reviewing a conditional use permit, the Governing Body shall evaluate the effect of the proposed use upon:

- A. The maintenance of safe and healthful conditions.
- B. Existing topographic and drainage features and vegetative cover on the site.
- C. The location of the site with respect to existing or future access roads.
- D. Its compatibility with uses on adjacent land.

5.7-7.33 In order to secure information upon which to base its determination the Governing Body may require the applicant to furnish, in addition to the information required for a zoning permit, the following information:

- A. a plat of the area showing contours, soil types, high water mark, groundwater conditions, bedrock, slope and vegetative cover;

- B. location of buildings, parking areas, traffic access, driveways, walkways, piers, open spaces and landscaping;
- C. plans of buildings, sewage treatment facilities, water supply systems, and arrangements of operations;
- D. specifications for areas of proposed filling, grading, lagooning or dredging; and
- E. other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.

5.72 Conditions attached to conditional use permits. The Zoning Administrator, upon consideration of the criteria listed above and the purposes of this ordinance, shall attach such conditions to the issuance of the conditional use permit as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

- (1) increased setbacks from the ordinary high water level;
- (2) limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted;
- (3) special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas;
- (4) specified sewage treatment and water supply facilities;
- (5) landscaping and planting screens;
- (6) period of operation;
- (7) operational control;
- (8) sureties;
- (9) deed restrictions;
- (10) locations of piers, docks, parking, and signs; and
- (11) type of construction.

5.72-7.34 Notice and Public Hearing.

- (1) Before making a recommendation upon an application for conditional use permit the Governing Body shall hold a public hearing; notice of such a public hearing specifying the time, place, and matters to come before the Governing Body shall be published in the official paper of Cuyuna at least ten (10) days in advance of such hearing.
- (2) Copies of all notices of hearing to consider variances, conditional uses or amendments pertaining to land within the shoreland district shall be received by the Commissioner of Natural Resources at least ten (10) days prior to such hearing.
- (3) A copy of all amendments and final decisions granting variances or conditional uses within the shoreland district shall be sent to the commissioner of Natural Resources within ten (10) days of final action or amendment.

5.72-7.35 Fees. The applicant, upon filing of his application, shall pay a fee to the Zoning Administrator not to exceed administrative costs; such fees shall be determined by the Governing Body.

5.8 Water Supply and Sewage Treatment

5.81 Water Supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.

5.82 Sewage treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:

- A. Publicly—owned sewer systems must be used where available.
- B. All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency’s standards for individual sewage treatment systems contained in the document titled, “Individual Sewage Treatment Systems Standards, Chapter 7080,” a copy of which is hereby adopted by reference and declared to be a part of this ordinance.
- C. On-site sewage treatment systems must be set back from the ordinary high water level and from adjacent property line in accordance with the setbacks contained in Section 5.21.
- D. All proposed sites for individual, sewage treatment systems shall be evaluated in accordance with the criteria in subitems (1) - (4). If the determination of a site’s suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the

applicant to provide sufficient soil borings and percolation tests from on—site field investigations.

Evaluation criteria:

- (1) depth to the highest known or calculated ground water table or bedrock;
- (2) soil conditions, properties, and permeability;
- (3) slope; and
- (4) the existence of lowlands, local surface depressions, and rock outcrops.

E. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with section 5.84 and 6.3 of this ordinance.

5.83 Permit. No person, firm or corporation shall install, alter, repair, or extend any individual sewage treatment system without first obtaining a permit therefor from the Zoning Administrator for the specific installation, alteration, repair or extension.

- A. Application shall be made in writing upon printed blanks or forms furnished by the Zoning Administrator and shall be signed by the applicant.
- B. Each application for a permit shall have thereon the correct legal description of the property on which the proposed installation, alteration, repair or extension is to take place, and each application for a permit shall be accompanied by a plan of the site, of reasonable scale or accuracy, showing the location of any proposed or existing buildings located on the property with respect to the boundary lines of the property and complete plans of the proposed sewage treatment system with substantiating data, if necessary, attesting to the compliance with the minimum standards of this ordinance. A complete plan shall include the location, size and design of all parts of the system to be installed, altered, repaired or extended. The application shall also show the present or proposed location of water supply facilities and water supplying piping, and the name of the person, firm or corporation who is to install the system, and shall provide such further information as may be required by the Zoning Administrator.
- C. Administration. The Zoning Administrator may assign responsibility for administration of these provisions to a qualified inspector.

D. Inspection. All systems shall be inspected by the Zoning Administrator or his designated inspector before they are back filled.

5.84 Nonconforming Systems. All nonconforming sanitary systems shall be brought into compliance within five years from the date of this ordinance.

SECTION 6.0 – NONCONFORMITIES

All legally established nonconformities as of the date of this ordinance may continue, but they will be managed according to applicable state statutes and other regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland areas:

- 6.1. Construction on nonconforming lots of record.
 - A. Lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of Section 5.1 of this ordinance may be allowed as building sites with variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this ordinance are met.
 - B. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the board of adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
 - C. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Section 5.1 of this ordinance the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 5.1 of this ordinance as much as possible.
- 6.2. Additions/expansions to nonconforming structures.
 - A. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Section 5.0 of this ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Section 3.3. In any event, any structural alteration or addition to a substandard use which will increase the substandard use shall not be allowed.

B. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:

- (1) the structure existed on the date the structure setbacks were established;
- (2) a thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
- (3) deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and
- (4) the deck is constructed primarily of wood, and is not roofed or screened.

6.3 Nonconforming sewage treatment systems.

A. A sewage treatment system not meeting the requirements of Section 5.8 of this ordinance must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.

B. The governing body of the community of Cuyuna has by formal resolution notified the commissioner of its program to identify nonconforming sewage treatment systems. The community shall use the following methods for identification of nonconforming sewage treatment systems:

- (1) require a certificate of compliance for the system at the time of any variance or permit request;
- (2) require a certificate of compliance at the time property is transferred; and
- (3) employ annual visual inspections by members of zoning commission.

The Cuyuna City Council will require upgrading or replacement of any nonconforming system identified by this program within a reasonable period of time which will not exceed 2 years. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota

Statutes, section 105.485, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution control Agency's Chapter 7080 for design of on-site sewage treatment systems, shall be considered nonconforming.

SECTION 7.0 – SUBDIVISION/PLATTING PROVISIONS

7.11 Land Suitability. Each lot created through subdivision, including planned unit developments authorized under Section 8.0 of this ordinance, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety or welfare of future residents of the proposed subdivision or of the community.

7.12. Consistency with other controls. Subdivisions must conform to all official controls of this community. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with Sections 5.2 and 5.8 can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of section 5.1, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks must not be approved.

7.13 Information requirements. Sufficient information must be submitted by the applicant for the community to make a determination for land suitability. The information shall include at least the following:

- (1) topographic contours at ten-foot intervals or less from United States Geological Survey Maps or more accurate sources, showing limiting site characteristics;
- (2) the surface water features required in Minnesota Statutes, section 505.02, subdivision 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
- (3) adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
- (4) information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic

conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;

- (5) location of 100—year flood plain areas and floodway districts from existing adopted maps or data; and
- (6) a line or contour representing the ordinary high water level, the “toe” and the “top” of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

7.14 Dedications. When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

7.15 Platting. All subdivisions that create two or more lots or parcels that are 5 acres or less in size shall be processed as a plat in accordance with Minnesota Statutes, Chapter 505. No permit for – construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.

7.16 Controlled Access or Recreational Lots. Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision must meet or exceed the sizing criteria in Section 5.14 of this ordinance.

SECTION 8.0 — PLANNED UNIT DEVELOPMENT

- 8.1 Permissibility. Planned unit developments (PUD's) are not allowed. This section reserved for future use.

SECTION 9.0 – AMENDMENT

- 9.1 Application.
 - 9.11 This ordinance may be amended whenever the public necessity and the general welfare require such amendment by following the procedure specified in this section.
 - 9.12 Requests for amendment of this ordinance shall be initiated by a petition of the owner or owners of the actual property, or by action of the Governing Body, the City Council of Cuyuna.
 - 9.13 An application for an amendment shall be filed with the office of the Zoning Administrator.
- 9.2 Public Hearing. Upon receipt in proper form of the application and other requested material, the Governing Body shall conduct a public hearing in the manner prescribed by Minnesota Statutes, Section 462.357.
- 9.3 Authorization. In accordance with state law, following the public hearing, the ordinance may be amended by resolution adopted by a majority of all the members of the Governing Body.
- 9.4 Fees. To defray the administrative costs of processing of requests for an amendment to this ordinance, a fee not exceeding administrative costs shall be paid by the petitioner, such fee shall be determined by the Governing Body.

SECTION 10 – DATE OF EFFECT

This ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

10.1 Effectuation. Passed by the City Council of Cuyuna this 6 day of May, 1994. All other shoreland and inconsistent ordinances repealed.

Summary published in the Crosby-Ironton Courier on the 18 day of May, 1994.

Steve Endrizzi, Mayor of Cuyuna

William Bedard, Clerk for the City

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