

**HAY CREEK TOWNSHIP
GOODHUE COUNTY, MINNESOTA**

Ordinance No. 2013-01

**HAY CREEK TOWNSHIP
ZONING ORDINANCE**

Adopted on March 11, 2013 (with July 2013 amendment added)

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**HAY CREEK TOWNSHIP
ZONING ORDINANCE**

The board of supervisors of the Town of Hay Creek ordains:

**ARTICLE I
GENERAL PROVISIONS**

- 1.1 **Authority.** The Town Board of Hay Creek Township (the “Town”) hereby adopts this ordinance, which shall be known as the “Hay Creek Township Zoning Ordinance” (this “Ordinance”), pursuant to its authority under Minnesota Statutes, sections 462.351 to 462.364, and such other law as may apply. This Ordinance does not rely on the authority provided in Minnesota Statutes, sections 366.10 to 366.181 and the procedures and requirements of those sections do not apply to this Ordinance. The Town has not adopted and does not administer or enforce the Minnesota Building Code.
- 1.2 **Intent and Purpose.** This Ordinance is adopted with the following intent and for the following purposes:
- a) Protect and promote the public health, safety, welfare, and morals;
 - b) Protect property values and preserve the quiet enjoyment of property;
 - c) Provide for the orderly development of the Town consistent with the regulations and standards set out in this Ordinance;
 - d) To place all of the land within the Town within a zoning district consistent with the zoning districts established by Goodhue County for the Town;
 - e) To allow and regulate certain uses of land and structures within the Town while prohibiting other uses and structures;
 - f) To regulate structures and buildings within the Town including, but not limited to, the size, location, and permit required;
 - g) Conserving natural and scenic areas of the Town including, but not limited to, wildlife corridors;
 - h) Conserving natural resources, watersheds, open spaces, and bluffs;
 - i) Protect archeological, historical, and cultural features of the Town;
 - j) To make clear the provisions of this Ordinance are intended to be the minimum requirements applicable within the Town and that structures and land uses remain subject to such other laws, rules, regulations and ordinances as may apply; and
 - k) To prescribe penalties for violating this Ordinance.
- 1.3 **Jurisdiction.** This Ordinance shall apply to all areas in Hay Creek Township, Goodhue County, Minnesota, except areas within the incorporated limits of any city, however organized, or as may otherwise be provided by law.

1.4 **County Regulations.** Goodhue County has adopted shoreland regulations, floodplain regulations, subdivision regulations, and administers the state regulations related to individual subsurface sewage treatment systems (“ISTS”) or subsurface sewage treatment systems (“SSTS”). This Ordinance does not adopt, nor shall it be construed as adopting, any portion of those regulations and the Town is not assuming any responsibility for the administration or enforcement of those regulations. The County has also adopted the Goodhue County Zoning Ordinance (“County Ordinance”) to establish zoning districts and to impose regulations on the uses allowed within each district. The Town has elected to not impose, administer, and enforce the full scope of zoning regulations contained within the County Ordinance as part of this Ordinance. Instead, this Ordinance applies to and regulates only those uses and activities identified herein. The Town shall only be responsible for administering and enforcing the provisions of this Ordinance, including those provisions incorporated by reference, and anyone proposing to engage in or establish a regulated use or activity shall be required to obtain the required permit from the Town. The issuance of a permit by the Town does not constitute, or take the place of, a permit needed from the County, and the issuance of a permit by the County does not constitute, or take the place of, a permit needed from the Town. Anyone proposing to initiate, convert, or expand a use of land, or to construct or expand a building or structure, is strongly encouraged to contact both the County and the Town to identify the applicable regulations, restrictions, and permit requirements.

- a) Shorelands and Floodplains. Those portions of the Town designated as shoreland or floodplain areas by the County shall be treated as overlay districts for the purposes of this Ordinance and the land within them shall be subject to the regulations of both this Ordinance and of the applicable County ordinances.
- b) ISTS/SSTS. The County administers and enforces the Minnesota Rules, Chapters 7080-7083 regulations on ISTS/SSTS in the Town.
 - 1) Subdivisions. On July 29, 2002 the Town adopted the Hay Creek Township Subdivision Ordinance. That ordinance is hereby adopted and incorporated herein by reference, including any subsequent amendments thereto. Those proposing to subdivide property within the Town shall be subject to the Town’s subdivisions ordinance and the County’s subdivision regulations. Pursuant to Minnesota Statutes, section 505.09, subdivision 1a, the County may not approve the platting of any land within the Town unless the Town Board first approves the plat and the laying of streets and other public ways shown on it. The Town Board may require, as a condition of any such approval or as approval under its subdivision ordinance, that the owner or developer enter into a development agreement with the Town Board regarding the proposed plat to address such issues as the Town Board may determine are needed in order to adequately protect the public health, safety, and welfare including, but not limited to, reimbursement of actual costs, providing security in the form and amount acceptable to the Town, and ensuring the proper construction of public improvements.

1.5 **Minimum Standards.** In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, and welfare. Where the standards, regulations or requirements imposed by any provision of this Ordinance are either more or less restrictive than comparable standards, regulations or requirements imposed by any other ordinance, rule, or regulation of the Town, County, State, or Federal government, the statute, ordinance, rule, or regulation which imposes the more restrictive condition, standard, regulation, or requirement shall prevail. In the event of any conflict between this Ordinance and any private restrictions, protections, or covenants, the provisions of this Ordinance shall be met. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the Town, and shall not be deemed a limitation or repeal of any other powers granted by State statute.

1.6 **Adoption by Reference.** This Ordinance adopts by reference various provisions of the County Ordinance in order to promote consistency between this Ordinance and the County Ordinance and to avoid having to restate the provisions in full in this Ordinance. The provisions adopted by reference shall be interpreted to give effect to the intent of this Ordinance and in accordance with the following rules:

- a) The provisions adopted by reference shall include such other provisions of the County Ordinance either directly referenced in the adopted provisions or that are necessary to give effect to the provisions adopted by reference, even if those provisions are not specifically identified in this Ordinance;
- b) References to the Board of County Commissioners or to the County Board shall be to the Town Board unless the context clearly indicates otherwise;
- c) References to the Planning Commission shall be to the Hay Creek Township Planning Commission;
- d) References to the County Engineer shall be to the Town Board;
- e) References to a County highway right-of-way shall be to a Town road right-of-way unless the context clearly indicates otherwise; and
- f) All applications required by the provisions adopted by reference shall be submitted to the Town Zoning Administrator or, if one has not been appointed, to the Town Clerk.

1.7 **Rules of Interpretation.** The language set forth in the text of this Ordinance shall be interpreted in accordance with the following rules of construction:

- a) The singular includes the plural, and the plural the singular;
- b) The present tense includes the past and future tenses, and the future the present;
- c) The words “shall” and “must” are mandatory, and the word “may” is permissive;
- d) If a term is not specifically defined herein or in the County Ordinance, the word or term shall have the meaning given it in the most applicable Minnesota Statute or Minnesota Rules that defines the term in a context which is similar to the context in which it is used in this Ordinance. Any question as to the meaning of a

word or term used in this Ordinance shall be determined by the Board of Appeals and Adjustments;

- e) All measured distances expressed in feet shall be to the nearest 1/10 of a foot;
- f) General words are construed to be restricted in their meaning by preceding particular words;
- g) Specific language shall be controlling over general language;
- h) The references made herein to statutes, rules, regulations, or ordinances of the state or county shall automatically include any amendments made thereto without further action by the Town Board. Furthermore, such references shall serve to incorporate those statutes, rules, regulations, or ordinances by reference to the extent necessary to achieve the intent and purposes of this Ordinance. However, such incorporations are intended only to give effect to this Ordinance and are not intended to make the Town responsible for the administration or enforcement of the statutes, rules, regulations, or ordinances being referenced; and
- i) The listing of examples to further explain a term, concept, requirement, or process is not intended to be, and shall not be interpreted as, an exclusive listing. Unless the context clearly indicates otherwise, such listings are intended to be explanative without being exclusive or limited.

1.8 **Land Use Plan.** It is the policy of the Town that the enforcement, amendment and administration of this Ordinance be accomplished with due consideration of those recommendations contained in the Town's Land Use Plan.

1.9 **Applications.** All applications must be on forms approved by the Town Board. Any requests not submitted on an approved Town form shall not be considered an application for the purposes of this Ordinance or Minnesota Statutes, section 15.99 and shall be rejected. An application shall be immediately rejected if it is not accompanied by the required application fee. If an escrow is required, the applicant shall submit the required amount for escrow with the Town within five days of the submission of the application or the application shall be deemed incomplete and will not be processed.

1.10 **Unpaid Taxes or Charges.** Any application for a zoning request related to property in which there are delinquent property taxes, special assessments, penalties, interest, or past due public utility fees shall not be considered complete and shall not be processed until the owner certifies to the Town, with adequate supporting documentation, that all such delinquent or past due amounts, interest, and penalties have been paid in full. Furthermore, any person that submits an application for a zoning request that owes the Town for past zoning related fees or costs, or if the application relates to property on which there are zoning related fees or costs owed to the Town, the application shall be deemed incomplete and shall not be accepted or processed until all such delinquent or past due amounts have been paid in full to the Town. The Town will not process or issue a permit, variance, or any other zoning request to any of the above described properties until all past due amounts, penalties, and interest have been paid in full. The Town may collect any zoning related fees, charges, or costs owed to it by certifying the amount to the County Auditor as a service charge pursuant to Minnesota Statutes, section 366.012

for collection together with the property taxes levied against any real property the person or entity owing the amount owns in the State. The Town will provide the property owner written notice of its intent to certify the amount on or before September 15. The amounts so certified to the County shall be subject to the same penalties, interest, and other conditions provided for the collection of property taxes.

- 1.11 **Prior Zoning Ordinances.** With the exception of the Town’s previously adopted subdivision ordinance, this Ordinance supersedes and replaces all previous zoning and land use ordinances adopted by the Town Board and all such previous zoning and land use ordinances are hereby repealed. The repeal of the Town’s previous zoning and land use ordinances does not itself affect the status of any use, structure, or lot that was not in compliance with the earlier ordinances.
- 1.12 **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. 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 the application of said provisions to any other property, building, or structure not specifically included in said judgment.
- 1.13 **Compliance.** No structure shall be erected, placed, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose or in any manner, which is not in conformity with this Ordinance. Construction of all structures and uses must be in accordance with the application, plans, permit, and any applicable variance. Building permits, and interim use permits issued on the basis of approved plans and applications authorize only the use and construction set forth in such approved plans and applications and no other use or construction. Any use or construction not in conformance with that authorized shall be deemed a violation of this Ordinance unless a new or amended permit or variance is first obtained from the Town.
- 1.14 **Definitions.** For the purposes of this Ordinance, the following terms shall have the meaning given them in this Section. Any term not defined in this Section shall have the meaning given it in the County Ordinance. The definitions expressly set out in this Ordinance shall be controlling over the definitions contained in the County Ordinance, which are hereby adopted by reference.
- a) **Commercial Mining Operation.** “Commercial Mining Operation” means a commercial mining operation requiring an interim or conditional use permit under the County Ordinance or that is otherwise engaged in any or all of the following:
- 1) Extraction from the earth of minerals for sale or use off of the extraction site;
 - 2) Manufacturing or processing operations that involves the use of equipment for the crushing, screening, separation, cleaning, or blending of minerals obtained by extraction from the mining site or with materials transferred from off-site;

- 3) Manufacturing processes aimed at producing mineral products for sale or use by the operator;
 - 4) Stockpiling of mineral products for sale or use off-site and stockpiling of waste materials;
 - 5) Transport of the extracted minerals, finished products, or waste materials to or from the extraction site; or
 - 6) Disposal of waste materials.
- b) County. “County” means Goodhue County, Minnesota.
 - c) County Ordinance. “County Ordinance” means the most current version of the Goodhue County Zoning Ordinance.
 - d) Land Use Plan. “Land Use Plan” means the Hay Creek Township Community-Based Land Use Plan, as amended.
 - e) Large-Scale Commercial Mining Operation. “Large-Scale Commercial Mining Operation” means any Commercial Mining Operation that satisfies one or more of the following criteria. All aspects of the Commercial Mining Operation, including all related projects, stages, and phases of the operation occurring anywhere or at any time within the Town, shall be taken together and considered in determining whether any of the following criteria are satisfied with respect to the operation:
 - 1) The operation excavates 40 acres or more of land to a mean depth of ten feet or more during its existence;
 - 2) The operation excavates 20 acres or more of forested or other naturally vegetated land in shoreland areas;
 - 3) The operation excavates 40 acres or more of forested or other naturally vegetated land in non-shoreland area;
 - 4) The operation uses tunneling, shafting, or hydraulic dredging;
 - 5) The operation utilizes blasting with more than three blasts occurring within a calendar year;
 - 6) The operation generates 50 or more round-trip truck trips in any one day period;
 - 7) The operation involves the use or creation of a settling or retention pond; or
 - 8) The operation involves the use of flocculants or other similar chemicals.
 - f) Metallic Mineral. “Metallic Mineral” means any mineral substance of a metalliferous nature, including iron ores and taconite ores.
 - g) Mineral. “Mineral” or “Minerals” means any metallic mineral, nonmetallic mineral, or fossil fuel.
 - h) Mineral Processing Facility. “Mineral Processing Facility” means any facility, building, structure, or site designed or used for the crushing, washing, screening, separation, drying, sorting, storage, redistribution, or transfer of mineral materials that is not located on the same parcel of property from which the Minerals were extracted.

- i) Mining. “Mining” means the excavation of one or more minerals and includes any removal, stockpiling, processing, transferring, or storage of minerals either on or off of the extraction site.
- j) Mining Operation. “Mining Operation” means the use of land for the extraction or storage of minerals and includes all associated uses and activities.
- k) Noncommercial Mining Activities. “Noncommercial Mining Activities” means any of the following:
 - 1) Excavations or grading on the site of a building project for which a building permit has been issued;
 - 2) Excavations or grading solely for on-site domestic or agricultural use;
 - 3) Excavation in a right-of-way, temporary easement, or utility corridor by state, county, city or Town authorities in connection with construction or maintenance of public improvements;
 - 4) Excavations or grading associated with preparing for, or restoring from, natural disasters;
 - 5) Excavations that do not extract more than four hundred (400) cubic yards of materials annually and the total area excavated on the property does not exceed one (1) acre over the entire life of the mining operation;
 - 6) Excavation for agricultural purposes if the excavated material is not moved off-site;
 - 7) Stockpiling of nonmetallic minerals for use by public road authorities and contractors on roads or parking lots, for construction purposes, or by retailers for direct resale to customers for non-commercial uses;
 - 8) Incidental removal of mineral materials associated with some other activity such as commercial sod production, tree sales and relocation, and production of agricultural crops;
 - 9) Excavation for public utility purposes; or
 - 10) Temporary excavations involving mining operations associated with road construction, commonly known as temporary borrow pits, used exclusively for public infrastructure construction projects if the project is under the administration of a public entity and the contract requires erosion control, sediment containment and site restoration provisions at least as strict as those in the MPCA’s NPDES General Storm Water Permit. These temporary borrow pits must be closed and restored within 24 months of the first date of work on the project.
- l) Nonmetallic Minerals. “Nonmetallic minerals” mean a product, commodity, or material of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include, but are not limited to, stone, rock, sand (including, but not limited to, silica sand), gravel, lime, asbestos, beryl, diamond, clay, coal, feldspar, peat, and talc.
- m) Person. “Person” means a natural person, partnership, corporation, association, or other legal entity.

- n) Town. “Town” means Hay Creek Town, Goodhue County, a public corporation under the laws of Minnesota.
- o) Town Board. “Town Board” means the board of supervisors of Hay Creek Town, Goodhue County, Minnesota.
- p) Zoning Administrator. “Zoning administrator” means the person appointed by the Town Board to serve as the zoning administrator for the Town or the Town Board if it does not specifically identify one person to serve as the zoning administrator for the Town.

ARTICLE II

MINING

2.1 **Findings**. The Town Board hereby finds and determines as follows with respect to mining and related activities:

- a) The sharp increase in interest in mining the silica sands found to exist in eastern Minnesota, including in Hay Creek Township, and western Wisconsin has raised concerns over the impacts of silica sand mining and of large-scale mining operations generally;
- b) A great deal of work has been done in Minnesota and Wisconsin to study the potential impacts created by silica sand mining. The impacts can vary depending on the size of the mining operation, how the mine is actually operated, and the on-site processing activities. The Town does not have the staff and resources available to analyze every aspect of a mining operation and the potential variables to determine its potential impacts, and determines that the best method for controlling the potential negative impacts from mining operations is to prohibit Large-Scale Commercial Mining Operations, limit where Commercial Mining Operations may be established in the Town, and to limit what may occur as part of a Commercial Mining Operation so that it does not cross any of the thresholds established as constituting a prohibited Large-Scale Commercial Mining Operation;
- c) The Town contains many natural areas and sensitive bluffs that the Town recognized in its Land Use Plan as needing protection;
- d) The primary uses within the Town are agricultural and residential. The Town contains no industrial, large manufacturing, or similar uses;
- e) The Town recognizes that a certain amount of excavation, grading, and removal of mineral materials is associated with activities such as agricultural production, the repair and improvement of roads, and building projects. The Town has experience with these activities and finds that their relatively small size and minimal amount of processing and transporting activities have not resulted in significant negative impacts to the community;
- f) There are currently no active Large-Scale Commercial Mining Operations in the Town;

- g) The Town Board determines that allowing Large-Scale Commercial Mining Operations in the Town would be contrary to the goals and policies established in the Land Use Plan to protect, preserve, and enhance the resources of the Town, including the protection of its bluff areas, public infrastructure, and those living and working within the Town; and
- h) In order to effectively allow Commercial Mining Operations while prohibiting Large-Scale Commercial Mining Operations, the component parts of a mining operation located within the Town must be taken together and treated as a whole to ensure no mining operation expands to, or is operated as, a Large-Scale Commercial Mining Operation.

2.2 **Purpose.** The purpose of this Article is to allow for Noncommercial Mining Activities throughout the Town without a Town permit, allow Commercial Mining Operations within the Agricultural Protection District of the Town with the issuance of an interim use permit from the Town, and to prohibit Large-Scale Commercial Mining Operations and Mineral Processing Facilities throughout the Town.

2.3 **Connected Actions.** For the purposes of determining whether a proposed Commercial Mining Operation does or would constitute a Large-Scale Commercial Mining Operation all aspects, stages, and phases of the mining operation occurring within the Town shall be considered together, including all operations of the owner or operator of the mining operation, together with any subsidiary or related companies directly or indirectly involved in the mining operation, located within the Town. The Town Board shall determine the scope of a mining operation for the purposes of deciding whether the operation constitutes a Large-Scale Commercial Mining Operation.

2.4 **Prohibited Mining and Related Activities.** The following uses are prohibited within the Town:

- a) **Large-Scale Commercial Mining Operations.** The establishment of a Large-Scale Commercial Mining Operation, either as a new use or through the expansion or change in operations of a Commercial Mining Operation or other mining operation, is prohibited within the Town and is a violation of this Ordinance.
- b) **Mineral Processing Facilities.** The establishment of a Mineral Processing Facility, either as a new use or as an addition to or expansion of a Commercial Mining Operation, is prohibited within the Town and is a violation of this Ordinance.

2.5 **Noncommercial Mining.** Noncommercial mining is allowed as a permitted use within the Town and does not require a permit from the Town except as may be required by this Ordinance for any structures or buildings being constructed or expanded associated with the use.

2.6 **Commercial Mining Operations.** Commercial Mining Operations are allowed in the Town only to the extent provided in this Section and are subject to the following restrictions and requirements:

- a) Allowed. Commercial Mining Operations are only allowed within the Agricultural Protection District. No new Commercial Mining Operation, or an expansion of a Noncommercial Mining Activity into a Commercial Mining Operation, shall occur unless it is located in the Agricultural Protection District and an interim use permit is first obtained from the Town Board pursuant to the interim use permitting procedures established in this Ordinance.
- b) Existing Operations. A Commercial Mining Operation existing as of the effective date of this Ordinance that is located within the Agricultural Protection District shall not be allowed to expand the operation beyond the boundaries established in the permit issued for the mining operation or, if there is no permit, beyond the current boundaries of the property without first obtaining an interim use permit from the Town Board. A Commercial Mining Operation existing as of the effective date of this Ordinance that is not located within the Agricultural Protection District is a nonconforming use subject to the limitations imposed by this Ordinance on nonconforming uses.
- c) Application Materials. An application for an interim use permit to establish or expand a Commercial Mining Operation in the Town shall not be considered complete, and shall not be processed, unless it contains all of the information and supporting documentation required by Article 14, Section 5, subd. 1 - 3 of the County Ordinance together with the following additional information:
- 1) A stockpiling plan that includes the location and height of all proposed stockpiles.
- d) Performance Standards. All Commercial Mining Operations are required to comply with the performance standards contained in Article 14, Section 6, subd. 4 of the County Ordinance with the following modifications or additions:
- 1) The hours of operations established in Subd. 4(A) are modified to 7:00 a.m. to 7:00 p.m. Monday through Saturday.
 - 2) The performance standards are expanded to include lighting, as follows:
 - (a) Lighting. All lights must have full cut-off shrouds so that no light is directed upward or at structures not on the property. Portable lighting shall be used only as necessary to illuminate work areas.
 - 3) Setbacks established in Subd. 4(L)(1) is replaced with the following, which shall apply to all new mining operations and to the expansion of any existing mining operations:
 - (a) No mining operations or activities (including stockpiling) shall take place within two thousand, six hundred and forty (2,640) feet of any existing dwelling, occupied structure, or platted residential subdivision, not owned by the mining operator or owner. For the purposes of applying this setback, an occupied structure includes commercial, non-commercial, recreational, religious, and other structures in which members of the public may be present as part of the regular or customary use of the structure. This setback requirement may be reduced by approval of the Town Board if the mining operation and affected residential owners reach a buyout agreement or “property value guarantee” for possible sale of their residence(s).

**HAY CREEK TOWNSHIP
GOODHUE COUNTY, MINNESOTA**

Ordinance No. 2013-02

**AN ORDINANCE AMENDING THE HAY
CREEK TOWNSHIP ZONING ORDINANCE**

The Board of Supervisors of the Town of Hay Creek ordains:

Section I. Citation Update. Article II, Section 2.6(d)(3) of the Hay Creek Township Zoning Ordinance is hereby amended by deleting the ~~stricken~~ material adding the double underlined material as follows:

- (3) Setbacks established in Subd. 4(L)(1)~~&(2) are~~ is replaced with the following, which shall apply to all new mining operations and to the expansion of any existing mining operations:

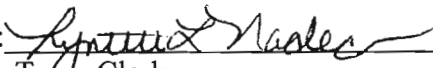
Section II. Setback. Article II, Section 2.6(d) of the Hay Creek Township Zoning Ordinance is hereby amended by adding the double underlined material as a new subpart (4) as follows:

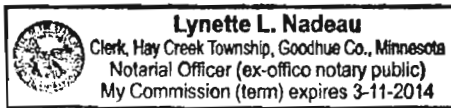
- (4) Setbacks established in Subd. 4(L)(7) are replaced with the following, which shall apply to all new mining operations and to the expansion of any existing mining operations:
 - (a) No mining operations or activities (including stockpiling) shall take place within five thousand, two hundred and eighty (5,280) feet (1 mile) of a State designated trout stream.
 - (b) The Town may impose additional or expanded setback requirements as a condition of an interim use permit it issues if any of the following circumstances exist with respect to the particular proposed mining operation:
 - (1) The elevation of the mining operation or activities in relationship to a public water feature is such that it creates an increased risk of negatively impacting the public water feature. For the purposes of this Section, public water feature includes shoreland areas, lakes, rivers, streams, sinks, springs, and seeps; or
 - (2) The location of the proposed mining operation or activities, or the surrounding topography, is such that it creates a special or enhanced risk to public water features.
 - (c) No mining operations may be conducted within twenty-five (25) feet of the water table.

Adopted on the 8 day of July, 2013.

BY THE TOWN BOARD


Town Chairperson

Attest: 
Town Clerk



ARTICLE III
PERFORMANCE STANDARDS

The uses identified in this Article are subject to Town regulation and may not be established in the Town unless the applicable permit is first obtained from the Town.

- 3.1 **Building Permit Required.** Article 2, Section 4 of the County Ordinance regarding building permits is hereby adopted by reference. Anyone intending to construct, build, erect, place, enlarge, or structurally alter any building must first obtain a building permit from the Town. A building permit shall not be issued unless the applicant demonstrates compliance with all applicable setback, height, and other standards and requirements established in the County Ordinance, which are hereby adopted by reference, for the particular zoning district in which the building or structure is located. For the purposes of this Ordinance, the term building permit is descriptive and does not indicate the Town has adopted or is administering any portion of the Minnesota State Building Code.

ARTICLE IV
BLUFF LAND PROTECTION

- 4.1 **Bluff Land Protection.** Article 12 of the County Ordinance regarding bluff land protection is hereby adopted by reference with the following modifications or additions:
- a) Section 4, Subd. 4 is replaced with the following:
 - Subd. 4. No mining, grading, excavating, or filling (including Mineral Extraction) shall be permitted within the bluff impact zones. Such zones shall be preserved in their natural state.

ARTICLE V
ZONING DISTRICTS

- 5.1 **Zoning Districts.** The following primary and overly zoning districts have been established and exist within the Town:
- a) Primary Zoning Districts
 - 1) A-1, Agricultural Protection
 - 2) A-2, Agriculture
 - 3) A-3, Agriculture/Urban Expansion
 - 4) B-2, Highway Business
 - 5) R-1, Suburban Residence
 - b) Overlay Districts
 - 1) FP, Floodplain
 - 2) S, Shoreland
 - 3) W, Wetland

- 5.2 **Zoning Map.** The zoning map adopted by the County showing the location and boundaries of the zoning districts is hereby adopted by reference and incorporated herein as the Hay Creek Township Zoning Map.
- 5.3 **Prohibited Uses.** Only those uses expressly allowed within a zoning district under the County Ordinance may occur within that district, subject to the additional restrictions and prohibitions contained in this Ordinance. Without limiting the foregoing, the following uses are prohibited within the Town regardless of where they are proposed to be located:
- a) Large-Scale Commercial Mining Operations; and
 - b) Mineral Processing Facilities.

ARTICLE VI

NONCONFORMING USES, STRUCTURES, AND LOTS

- 6.1 **Purpose.** It is the purpose of this Article to provide for the regulation of nonconforming buildings, structures, and uses and to specify those requirements, circumstances, and conditions under which nonconforming buildings, structures, and uses will be operated and maintained. This Ordinance establishes separate zoning districts, each of which is an appropriate area for the location of uses which are permitted in that district. It is necessary and consistent with the establishment of these districts that nonconforming buildings, structures, and uses will not be permitted to continue without restriction. Furthermore, it is the intent of this Section that all non-conforming uses shall be eventually brought into conformity.
- 6.2 **Nonconforming Uses and Structures.** Except as otherwise provided by law or this Ordinance, any use or structure lawfully existing on the effective date of this Ordinance may be continued at the size and in the manner of operation existing upon such date, subject to the following conditions:
- a) Except as expressly allowed by this Ordinance, a nonconforming use or structure shall in no way be expanded, enlarged, or extended, either on the same property or onto an adjoining lot of record. Prohibited expansion, enlargement, or extension shall include anything that increases the intensity of the use including, but not limited to, a change to a more intense nonconforming use or a physical expansion of the existing use or structure that increases the height, volume, or area dimensions of the non-conforming use or structure;
 - b) Routine maintenance of a structure containing or relating to a lawful nonconforming use is permitted, including any necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use. Nothing in this Section will prevent the placing of a structure into a safe condition after it has been declared unsafe by the appropriate official;
 - c) Alterations may be made to a building containing nonconforming residential units when the alterations will improve the livability of such units, provided that such

alterations do not increase the number of dwelling units in the building. Such alterations must be approved by the Zoning Administrator;

- d) Whenever a nonconforming structure or use is damaged by fire or other peril to the extent of 50 percent of its estimated market value, as indicated in the records of the County Assessor at the time of damage, it may be reconstructed. The nonconforming structure or use shall not be permitted to be reconstructed if the damage is greater than 50 percent of the 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 was damaged. When a nonconforming structure in a shoreland area 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 by the Town or County, if practical. In that event, conditions will be placed on the building permit in order to mitigate created impacts on adjacent properties and the water body;
- e) Whenever any lawful nonconforming use of any structure or land is replaced by another use or structure, the new use or structure must conform to the provisions of this Ordinance and it shall not thereafter be changed to any nonconforming use or structure;
- f) If the nonconforming use of land is discontinued for a period of more than one year, the subsequent use of the land or the structure shall be in conformity with this Ordinance;
- g) Nonconforming uses or structures which are declared by the Town Board to be public nuisances shall not be allowed to continue as legal nonconforming uses or structures;
- h) No repair, replacement, maintenance, improvement, or expansion of a nonconforming use or structure in a floodplain area shall be allowed if such activity would jeopardize the property's continued eligibility in the National Flood Insurance Program, would increase flood damage potential, or would increase the degree of obstruction to flood flows in the floodway;
- i) An existing resort may maintain and replace its structures and expand to the extent allowed in Minnesota Statutes, Section 103G.227; and
- j) A nonconforming use of a parcel of land may not be extended to cover more land than was occupied by that use when it became nonconforming.

6.3 **Nonconforming Lots.**

- a) All lots of record, existing as of the date of this Ordinance and all prior zoning ordinances in the Town, that do not meet the minimum lot area and lot width requirements, may be allowed as building sites without a variance from lot size or width requirements provided that it satisfies all of the following:
 - 1) The use is permitted in the district;
 - 2) The lot was created compliant with official controls in effect at the time;

- 3) If the lot is in a shoreland area, it has been in separate ownership from abutting lands at all times since it became nonconforming;
 - 4) The setback requirements of this Ordinance are met; and
 - 5) The applicable ISTS/SSTS regulations are met.
- b) Lawful preexisting nonconforming lots recorded in the office of the County Recorder located in a shoreland area shall be subject to Minnesota Statutes, section 462.357, subdivision 1e, paragraphs (d) through (j).
- c) A preexisting lot that is subsequently reduced in area because of a taking for a public purpose or public right-of-way such that it no longer contains the required minimum area shall continue to be considered a parcel of record and shall be considered a legally buildable parcel provided the applicable setback requirements of this Ordinance and the ISTS/SSTS standards are met.

ARTICLE VII

ADMINISTRATION

7.1 **Zoning Administrator**. The Town Board may appoint a person to serve as the Zoning Administrator for the Town. If the Town Board does not specifically designate a person to serve as the Zoning Administrator the Town Board shall serve as the Zoning Administrator and may delegate one or more of the duties of the position to one or more persons as the Town Board determines is appropriate. Such person or persons shall be fully authorized to carry out the delegated duties on behalf of the Town.

- a) **Duties**. The Zoning Administrator shall have the following duties, which shall be conducted in a manner which is consistent with this Ordinance, applicable laws, and the directions and instructions of the Town Board:
- 1) Administer the provisions of this Ordinance;
 - 2) Determine whether a permit application is complete and complies with the terms of this Ordinance;
 - 3) Receive, and forward to the Planning Commission, Board of Appeals and Adjustments, or Town Board applications and other zoning materials as is appropriate;
 - 4) Issue permits once they have been approved as provided in this Ordinance;
 - 5) Issue notices of denial to applicants;
 - 6) Maintain permanent and current records of permits and approvals issued pursuant to this Ordinance, including, but not limited to, land use map changes, amendments to this Ordinance, issuance of interim use permits, variance approvals, and appeals;
 - 7) Conduct inspections to determine compliance with the provisions of this Ordinance and institute in the name of the Town, any appropriate actions or proceedings against a violator as provided by this Ordinance or law;
 - 8) Serve as an ex-officio member of the Planning Commission;
 - 9) Collect all fees required by this Ordinance and pay the same to the Town;
 - 10) Track the application of the 60 day rule to land use requests, provide notices to applicants as may be needed, and to keep the Town informed of

the applicable deadlines for actions with respect to individual land use requests;

- 11) File for record with the Goodhue County Recorder or Registrar of Titles all zoning related documents required to be filed by law;
- 12) To enforce this Ordinance, including through the issuance of violation notices, stop work orders, cease and desist orders, or corrective orders as determined appropriate, and to work with the Town Attorney as needed to administer and enforce this Ordinance; and
- 13) To perform such other duties and responsibilities as provided in this Ordinance or as assigned by the Town Board.

7.2 **Planning Commission.** The Town Board previously established the Hay Creek Township Planning Commission, which is hereby reaffirmed as the Town's planning agency. The Planning Commission serves in an advisory capacity to the Town Board.

- a) **Composition.** The Planning Commission consists of up to seven voting members, which may include one Town officer. A majority of members constitutes a quorum to conduct the Planning Commission's business. Each Planning Commission member, including the Chair and Vice-Chair, shall have one vote on all matters acted upon by the Planning Commission. A member must be present at a meeting to vote.
- b) **Appointment, Vacancies, and Removal.** The Town Board appoints the Planning Commission members. Vacancies occurring on the Planning Commission are filled by Town Board appointment for the remainder of the term of the position.
- c) **Term.** Planning Commission members are appointed for a term of 3 years and until a successor is appointed and qualifies. Terms expire on April 1st. Commission members serve at the pleasure of the Town Board and may be removed by the Town Board at any time. The Town Board shall stagger the terms of Planning Commission members as it determines is appropriate to minimize the number of Planning Commission positions expiring in the same year.
- d) **Officers and Duties.** The Planning Commission shall appoint from among its members a Chair, Vice-Chair, and a Secretary. The Chair shall be the presiding officer for Commission meetings and shall sign documents on behalf of the Commission as needed. The Vice-Chair shall conduct the duties of the Chair in the Chair's absence. The Secretary shall provide notices, keep records of the Commission's proceedings, and countersign the Chair's signature on Commission documents.
- e) **Compensation.** The Town Board shall determine if members will be compensated for their service on the Planning Commission, determine the amount of compensation if provided, and the policy for reimbursing expenses incurred in carrying out the Planning Commission's duties.
- f) **Rules and Procedures.** The Planning Commission may adopt rules and procedures related to how it conducts its meetings and hearings, provided such rules and procedures are consistent with the provisions of this Ordinance and applicable laws.

- g) Meetings. The Planning Commission shall hold regular meetings as needed. The Chair or Vice-Chair, along with the consent of at least one other Planning Commission member, may call special meetings as needed to conduct the Planning Commission's business.
- h) Planning Commission Powers and Duties. The Planning Commission shall have the powers and duties provided it by Minnesota Statutes, chapter 462, those indicated in this Ordinance, and such other powers and duties as the Town Board may delegate to it. Unless directed otherwise by the Town Board, the Planning Commission shall be responsible for conduct such hearings as may be required by law or by ordinance to implement and administer the Town's official controls. The Planning Commission does not have the authority to hire professionals or to otherwise bind the Town to a contract.

7.3 **Board of Appeals and Adjustments.** The Town Board shall serve as the Hay Creek Township Board of Appeals and Adjustments.

- a) Rules and Procedures. The Board of Appeals and Adjustments may adopt rules and procedures related to how it conducts its meetings and hearings, provided such rules and procedures are consistent with the provisions of this Ordinance and applicable laws.
- b) Meetings and Hearings. The Board of Appeals and Adjustments will hold meetings and hearings as needed to conduct its duties. Meetings of the Board of Appeals and Adjustments may be held as part of the regular or special meetings of the Town Board.
- c) Powers and Duties. The Board of Appeals and Adjustments shall have the following powers and duties:
 - 1) To grant variances from the strict enforcement of the standards and provisions prescribed by this Ordinance. Variances shall only be granted based upon the criteria prescribed in this Ordinance;
 - 2) To hear and decide appeals. Appeals shall only be heard and considered in conformance with the procedures prescribed in this Ordinance;
 - 3) To interpret the provisions of this Ordinance and of any district boundary on the land use map; and
 - 4) Perform such other duties as provided in this Ordinance.

ARTICLE VIII
ZONING REQUESTS

8.1 **Building Permits.** On or after the effective date of this Ordinance, no person shall erect a foundation, or change the exterior perimeter of a building vertically or horizontally, construct, move, or alter any building, structure, or part thereof, without first obtaining a building permit from the Town.

- a) Application. An application for a zoning permit must be on the Town's approved form, be accompanied by the required application fee, be submitted to the Zoning Administrator, and shall contain all of the following information:
 - 1) The location and dimensions of the property;
 - 2) Be signed by the owner of the property or the owner's authorized agent;
 - 3) The nature of the proposed construction, alteration, or repair and the estimated cost; and
 - 4) A site plan containing all of the information required under Article 2, Section 4, Subd. 4 of the County Ordinance.
- b) Issuance. The Zoning Administrator is authorized to issue building permits upon the submission of a complete application and payment of the application fee, provided the Zoning Administrator determines the proposed work and resulting building or structure complies with this Ordinance.
- c) Display Required. The building permit must be displayed on the property in a location visible from the outside during the excavation, moving, changing, or altering any part of a structure.
- d) Penalties. Any person who commences a land use activity which requires a building permit without first having obtained such a permit from the Town shall be required to obtain an after-the-fact building permit and pay a multiple of the permit fee as indicated in the Town's current fee schedule.
- e) Duration. All building permits are valid for one (1) year from the date the permit is issued. If substantial construction has not taken place within one (1) year from the date on which the permit was granted, the permit shall become void and no further work may occur until a new building permit is applied for and obtained from the Town.

8.2 **Interim Use Permits.** As of the effective date of this Ordinance, no use requiring an interim use permit shall be initiated or expanded except upon issuance of an interim use permit from the Town Board pursuant to this Section.

- a) Application: Application for an interim use permit shall be made by the property owner, or its authorized agent, on the Town's application form, be accompanied by the required application fee and escrow (if required), and must, at a minimum, contain all of the following information:
 - 1) The name and mailing address of all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the application relates;
 - 2) The name of the applicant and of all owners of the property to which the application relates; and
 - 3) A description of the proposed use including, to the extent applicable, hours of operation, parking, anticipated traffic and routes, lighting plans, identification and explanation of any potential sources of significant noise, dust, vibration, or other impacts reasonably anticipated to be generated by the proposed use which could affect surrounding properties.

- b) Procedure: Requests for an interim use permit shall comply, and shall be processed in accordance, with the following:
- 1) Zoning Administrator: An application for an interim use permit must be submitted to the Zoning Administrator. The Zoning Administrator shall review the application to determine if it contains all the required information and is otherwise complete, including payment of the required fees. If an application is not complete, the Zoning Administrator shall provide the applicant written notice of what information is needed in order to make the application complete within 15 days of the Town's receipt of the application. The Zoning Administrator shall forward complete applications to the Planning Commission to conduct a hearing.
 - 2) Notice: At least ten days before the date of the hearing, notice shall be published in the Town's official newspaper and mailed by first-class mail to all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the application relates. The notice shall state the time, place, and purpose of the hearing. Failure of any property owner to receive notice of the hearing shall not in any way affect the validity of the hearing or its results.
 - 3) Site Investigation: The Town may conduct one or more site investigations of the property as part of processing a permit application. If a quorum or more of the Planning Commission or of the Town Board conducts a site investigation, notice shall be posted at the Town's posting places at least three days before the date of the inspection unless the inspection is being conducted as part of the hearing. The Town may also conduct one or more site investigations after a permit has been issued to review an alleged or potential violation of the conditions of the permit or of this Ordinance. Submission of an application, and acceptance of a permit, constitutes consent on the part of the owners of the property to the conditions imposed on the permit and to allow the Town to conduct inspections of the property at reasonable times to determine eligibility to receive a permit and then related to the administration and enforcement of the permit.
 - 4) Planning Commission: The Planning Commission shall conduct a public hearing on the proposed interim use permit and develop a recommendation to the Town Board regarding the proposed permit. The owner, or its authorized agent, is expected to attend the hearing to explain the application and to answer the Planning Commission's questions. In reviewing the request and developing its recommendation, the Planning Commission shall consider the criteria set out in this Section and such other factors as it determines are appropriate to evaluate the proposed use. It is the owner's burden to demonstrate it is eligible to receive the requested permit. If the Planning Commission recommends approval of the permit, its recommendation shall include the conditions it recommends be placed on the permit. The recommendation shall include any conditions the Planning Commission determines are appropriate and reasonable to address anticipated impacts of the proposed use in order to protect the public health, safety, and welfare. The recommended conditions may include any of the conditions that may be made applicable

to a conditional use permit and shall, at a minimum, include the date and/or event on which the permit will expire. The Planning Commission shall forward its recommendation, together with its supporting findings, to the Town Board.

- 5) Town Board: The Town Board shall consider the Planning Commission's recommendation and make a final decision regarding the proposed interim use permit. The Town Board shall consider the criteria set out in this Section and such other factors as it determines are appropriate to evaluate the proposed use including, but not limited to, the criteria evaluated by the Planning Commission in making its recommendation. The Town may impose such reasonable conditions as it determines are necessary on interim use permits it issues. An interim use permit must indicate, in the conditions placed on the permit, the date and/or event on which it terminates.
- c) Criteria: An “interim use” is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. In determining whether to approve an interim use permit application, the Town Board shall consider the following standards and criteria with respect to the proposed use in addition to any specific criteria or standards established in this Ordinance for the use:
 - 1) Whether the proposed use, under the circumstances, would:
 - (b) Be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the Town;
 - (c) Be harmonious with the general and applicable specific objectives of the Town’s Land Use Plan;
 - (d) Harm the natural and scenic areas of the Town, wildlife corridors, natural resources, watersheds, open spaces, or bluffs;
 - (e) Harm the archeological, historical, or cultural features of the Town;
 - (f) Be designed, constructed, operated and maintained to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area;
 - (g) Be hazardous or disturbing to existing or future neighboring uses;
 - (h) Involve uses, activities, processes, materials equipment and conditions of operation that will be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, scenic blight, glare or odors;
 - (i) Involve lighting, including lighted signs, that would impair the enjoyment of property and/or property owners in the vicinity or the safety of the traveling public;
 - (j) Be in conformance with the provisions of this Ordinance, and would not unreasonably interfere with the health, safety, and welfare of the surrounding owners and the public, if conducted in compliance with the conditions imposed on the permit; or

- (k) Adequately provide for parking, current and anticipated traffic congestion, and traffic safety so the use does not become or create a nuisance.
 - 2) The proposed use will terminate upon a date or event that can be identified with certainty; and
 - 3) The proposed use will not impose additional costs on the public if it is necessary for the public to take the property in the future.
- d) Conditions: The Town Board may attach such conditions to an interim use permit it issues as it deems necessary to achieve the purpose of this Ordinance and to protect the public health, safety, and welfare. These conditions may include, but are not be limited to, the following:
- 1) Increased setbacks;
 - 2) Landscaping, berming, fencing, screening or other facilities to protect nearby property;
 - 3) Periods and/or hours of operation;
 - 4) Intensity and duration of lighting;
 - 5) Location of parking and signs;
 - 6) Designating access and haul routes;
 - 7) Provide and maintain with the Town a performance bond or other financial security;
 - 8) Toxic material storage and handling;
 - 9) Fire control and access plan;
 - 10) Periodic compliance reviews; and
 - 11) Any other reasonable requirements necessary to fulfill the purposes and intent of this Ordinance including, but not limited to, the protection of public health, safety, and welfare as determined by the Town Board.
- e) Amended Permit: Any change involving structural alterations, enlargement, intensification of the use or similar change not specifically permitted by an interim use permit shall require that the interim use permit be amended. An application to amend an existing interim use permit shall be administered in the same manner that is required for a new interim use permit. All application and review procedures shall apply.
- f) Expiration and Revocation: An interim use permit shall expire and become void if the use it allows is not substantially started within 12 months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the use are mostly complete as determined by the Town Board. An interim use permit shall expire as of the date or event identified in the permit, but the owner may apply for a new interim use permit. The Town Board may revoke an interim use permit if it determines, after notice to the owner and conducting a public hearing, that any of conditions imposed on the permit have been violated.

8.3 Variiances. No variances shall be granted by the Town except in conformance with this Section.

- a) Authority: The Board of Appeals and Adjustments may grant a variance from the provisions of this Ordinance in order to promote the effective and reasonable application and enforcement of this Ordinance. A variance is a modification or variation of the provisions of this Ordinance as applied to a specific property. The Board of Appeals and Adjustments may not grant a variance for any use that is not allowed by this Ordinance for property in the zoning district in which the property is located. The Board of Appeals and Adjustments may grant a variance for the temporary use of a one family dwelling as a two family dwelling and may grant a variance for an earth sheltered construction as defined in Minnesota Statutes, section 216C.06, subdivision 14 when such construction would be in harmony with this Ordinance.
- b) Application: Application for a variance shall be made by the property owner, or its authorized agent, on the Town's application form, be accompanied by the required application fee and escrow (if required), and must, at a minimum, contain all of the following information:
- 1) The name and mailing address of all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the application relates;
 - 2) The name of the applicant and of all owners of the property to which the application relates;
 - 3) A description of the proposed use or structure to which the variance relates; and
 - 4) An explanation of the specific conditions and circumstances that give rise to the practical difficulties in strictly complying with the provisions of this Ordinance and the specific provisions of this Ordinance from which a variance is being sought.
- c) Procedure: Requests for a variance shall comply, and shall be processed in accordance, with the following:
- 1) Zoning Administrator: An application for a variance must be submitted to the Zoning Administrator. The Zoning Administrator shall review the application to determine if it contains all the required information and is otherwise complete, including payment of the required fees. If an application is not complete, the Zoning Administrator shall provide the applicant written notice of what information is needed in order to make the application complete within 15 days of the Town's receipt of the application. The Zoning Administrator shall forward complete applications to the Planning Commission to conduct a hearing.
 - 2) Notice: At least ten days before the date of the hearing, notice shall be published in the Town's official newspaper and mailed by first-class mail to all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the application relates. The notice shall state the time, place, and purpose of the hearing. Failure of any property owner to receive notice of the hearing shall not in any way affect the validity of the hearing or its results.
 - 3) Site Investigation: The Town may conduct one or more site investigations of the property as part of processing a variance application. If a quorum

or more of the Planning Commission or the Board of Appeals and Adjustments conducts a site investigation, notice shall be posted at the Town's posting places at least three days before the date of the inspection unless the inspection is being conducted as part of the hearing. The Town may also conduct one or more site investigations after a variance has been issued to review an alleged or potential violation of the conditions of the variance or of this Ordinance. Submission of an application, and acceptance of a variance, constitutes consent on the part of the owners of the property to the conditions imposed on the variance and to allow the Town to conduct inspections of the property at reasonable times to determine eligibility to receive a variance and then related to the administration and enforcement of the variance.

- 4) Planning Commission: The Planning Commission shall conduct a public hearing on the proposed variance and develop a recommendation to the Board of Appeals and Adjustments regarding the proposed variance. The owner, or its authorized agent, is expected to attend the hearing to explain the application and to answer the Planning Commission's questions. In reviewing the request and developing its recommendation, the Planning Commission shall consider the criteria set out in this Section and such other factors as it determines are appropriate to evaluate the proposed use. It is the owner's burden to demonstrate it is eligible to receive the requested variance. If the Planning Commission recommends approval of the variance, its recommendation shall include the conditions it recommends be placed on the variance. The recommendation shall include any conditions the Planning Commission determines are appropriate and reasonable to address anticipated impacts of the proposed use in order to protect the public health, safety, and welfare. The Planning Commission shall forward its recommendation, together with its supporting findings, to the Board of Appeals and Adjustments.
- 5) Board of Appeals and Adjustments: The Board of Appeals and Adjustments shall make the final decision regarding the requested variance after conducting a public hearing. The Board of Appeals and Adjustments shall not issue a variance unless it determines that the particular request satisfies the criteria set out in this Section. The Board of Appeals and Adjustments may impose such conditions on the variances it issues as it determines are reasonable. All such conditions must be directly related to and bear at least a rough proportionality to the impact the Board of Appeals and Adjustments determines will be created by the variance.

- d) Criteria: The owner has the burden of demonstrating that sufficient practical difficulties exist, based on the following criteria, with respect to its property to justify the issuance of a variance. The Board of Appeals and Adjustments shall consider the following criteria in determining whether to issue a variance:
 - 1) The variance is in harmony with the general purposes and intent of this Ordinance;
 - 2) The variance is consistent with the Land Use Plan;

- 3) The owner proposes to use the property in a reasonable manner not permitted by this Ordinance;
 - 4) The plight of the owner is due to circumstances unique to the property that were not created by the owner;
 - 5) If granted, the variance will not alter the essential character of the locality; and
 - 6) Economic considerations are not the sole basis for the requested variance.
- e) Recording. The Town Board will record, at the owners' expense, the variances it issues.
- f) Expiration and Revocation: A variance shall expire and become void if the use or structure to which it relates is not substantially started within 12 months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the use are mostly complete. The Board of Appeals and Adjustments may revoke a variance if it determines, after notice to the owner and conducting a public hearing, that any of conditions imposed on the variance have been violated.

8.4 Amendments. An amendment to the text of this Ordinance or of the land use map, including requests to rezone property, may only occur as provided in this Section.

- a) Who May Initiate: An amendment to this Ordinance or the land use map may be initiated by the Town Board, the Planning Commission, or by application of an affected property owner. Any amendment not initiated by the Planning Commission shall be referred to the Planning Commission for review and may not be acted upon by the Town Board until it has received the Planning Commission's recommendations, or until at least 60 days after the proposed amendment was submitted to the Planning Commission.
- b) Application: An owner seeking an amendment, including a request to rezone property, shall complete the Town's application form, together with the required application fee and escrow (if required), and the application must, at a minimum, contain all of the following information:
- 1) If the application involves a request to change district boundaries affecting an area of five acres or less, the name and mailing address of all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the application relates;
 - 2) The name of the applicant and of all owners of the property to which the application relates; and
 - 3) A description of the specific provisions of the Ordinance, or the proposed change in zoning, and proposed change.
- c) Procedure: Applications for an amendment, including rezoning, shall comply, and shall be processed in accordance, with the following:
- 1) Zoning Administrator: An application for an amendment must be submitted to the Zoning Administrator. The Zoning Administrator shall review the application to determine if it contains all the required information and is otherwise complete, including payment of the required

fee. If an application is not complete, the Zoning Administrator shall provide the applicant written notice of what information is needed in order to make the application complete within 15 days of the Town's receipt of the application. The Zoning Administrator shall forward complete applications to the Planning Commission to conduct a hearing.

- 2) Town Initiated Amendments. An amendment proposed by the Planning Commission shall be forwarded in writing to the Town Board for review. If the Town Board authorizes the Planning Commission to proceed with the amendment, the Planning Commission shall hold a hearing on the proposed amendment in accordance with the Town Board's authorization and this Section. If the Town Board initiated the amendment, the Planning Commission shall hold a hearing on the proposed amendment in accordance with this Section.
 - 3) Notice: At least ten days before the date of the hearing, notice shall be published in the Town's official newspaper. If the application involves a request to change district boundaries affecting an area of five acres or less, the notice shall also be mailed by first-class mail to all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the application relates at least ten days before the hearing. The notice shall state the time, place, and purpose of the hearing. Failure of any property owner to receive notice of the hearing shall not in any way affect the validity of the hearing or its results.
 - 4) Planning Commission: The Planning Commission shall conduct a public hearing on the proposed amendment and develop a recommendation to the Town Board regarding the proposed amendment. The owner, or its authorized agent, is expected to attend the hearing to explain the application and to answer the Planning Commission's questions. The Planning Commission shall forward its recommendations regarding a proposed amendment to the Town Board for final action.
 - 5) Town Board: The Town Board shall take action on the proposed amendment at a Town Board meeting. Approval of an amendment shall be by ordinance amending this Ordinance. If the amendment was initiated by application of an owner, the Town shall inform the property owner of the Town Board's decision.
- d) Limit on Similar Applications: No application of an owner for an amendment to the text of the Ordinance or the Zoning Map shall be considered by the Town within a one-year period following a denial of such request, except that a new application may be allowed if, in the opinion of the Zoning Administrator, there is new evidence or a sufficient change of circumstances to warrant additional consideration of the proposal by the Town.

8.5 Appeals. As of the effective date of this Ordinance, no appeal shall be heard except in accordance with the following.

- a) Appealable Decisions: Only alleged errors in an order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance are appealable to the Board of Appeals and Adjustments. The decisions

of the Town Board and the Board of Appeals and Adjustments are final and are not appealable to the Board of Appeals and Adjustments. Recommendations of the Planning Commission are not final decisions and are not appealable to the Board of Appeals and Adjustments.

- b) Notice of Appeal: In order to bring an appeal, a person shall file a written notice of appeal with the Town Clerk within 15 days of the date of the order or decision being appealed together with the required fee. The notice of appeal must, at a minimum, contain all of the following information:
- 1) The name, mailing address, and phone number of the person making the appeal;
 - 2) The name and mailing address of all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the appeal relates;
 - 3) Describe the specific order or decision being appealed, the date of the order or decision, and identify the person who issued the order or made the decision;
 - 4) A detailed explanation of the grounds for the appeal; and
 - 5) Identify the specific relief being sought by the appeal.
- c) Procedure: Notices of appeals shall comply, and shall be processed in accordance, with the following:
- 1) Town Clerk: The Town Clerk shall review the notice of appeal to determine if it contains all the required information and is otherwise complete. If a notice of appeal is not complete, the order or decision to which it relates is not appealable, or if it was not filed in a timely manner, the Town Clerk shall reject the notice of appeal. The Town Clerk shall provide a written notice of the rejection to the person that filed the appeal. The Town Clerk may consult the Board of Appeals and Adjustments and the Town Attorney as needed to make a determination as to whether a notice of appeal is complete, proper, and filed in a timely manner. The Town Clerk shall forward complete, proper, and timely notices of appeals to the Board of Appeals and Adjustments to conduct a hearing. The Town Clerk shall also provide a copy of the notice of appeal to the Planning Commission.
 - 2) Notice: At least ten days before the date of the hearing, notice shall be published in the Town's official newspaper and mailed by first-class mail to the person bringing the appeal and to all property owners of record, according to the county auditor's property tax records, within one-half mile of the property to which the appeal relates. The notice shall state the time, place, and purpose of the hearing. Failure of any property owner to receive notice of the hearing shall not in any way affect the validity of the hearing or its results. In scheduling the hearing, the Board of Appeals and Adjustments shall allow a reasonable time, not to exceed 60 days, for the Planning Commission to review and report on the notice of appeal.
 - 3) Planning Commission: The Planning Commission may review and provide a report to the Board of Appeals and Adjustments on a notice of appeal. The Planning Commission is not authorized to conduct a hearing

on the notice of appeal. If the Planning Commission develops a report it shall provide it to the Board of Appeals and Adjustments prior to the scheduled hearing.

- 4) Board of Appeals and Adjustments: The Board of Appeals and Adjustments shall conduct a public hearing on the notice of appeal. The appellant, or its authorized agent, is expected to attend the hearing to explain the appeal and to answer the Board of Appeals and Adjustments' questions. The Board of Appeals and Adjustments shall make the final decision regarding the matter being appealed. The Board of Appeals and Adjustments may reverse or affirm, wholly or partly, or modify the order or decision being appealed, and issue such orders, requirements, decisions, permits, or determinations, or provide such other relief as it deems appropriate. The Board of Appeals and Adjustments shall issue its decision in a written order which contains its findings. It shall provide a copy of its order to the appellant within 10 days of its issuance.
- 5) Judicial Review. Appeals from the final decisions of the Town Board or of the Board of Appeals and Adjustments may be brought as provided in Minnesota Statutes, section 462.361.

8.6 **Fees**. This section sets out the general requirements for fees related to the administration of, and for zoning requests made pursuant to, this Ordinance. The amount of the fees shall be established by a fee schedule in a resolution or ordinance adopted by the Town Board.

- a) Application Fee. Applicants shall be required to pay an application fee when submitting an application under this Ordinance. Application fees shall be in the amount determined by the Town Board and are intended to defray the administrative costs of processing requests. Application fees submitted as part of a complete application are not refundable, regardless of whether the application is approved, denied, or withdrawn;
- b) Escrow. In order to defray the additional costs the Town may incur to process a request made under this Ordinance, applicants may also be required to reimburse the Town for all consulting costs it incurs related to the particular request. Consulting costs include, without limitation, all attorney, planner, and engineering fees incurred related to the request. An applicant may be required to escrow cash with the Town in the amount determined by the Town Board or Zoning Administrator from which the Town will reimburse itself for the consulting costs it incurs. The applicant remains responsible for all such costs and shall promptly escrow additional funds if the Town Board or Zoning Administrator determines the existing escrowed amount will not be sufficient to fully reimburse the Town for its costs. Failure to promptly provide additional funds or to otherwise fully reimburse the Town for its consulting cost shall be a sufficient basis on which to delay the processing of a request or to deny a request.
- c) Reimbursement in Full Required. Upon the termination of the application, by an approval, denial, withdrawal, or any other means, all costs incurred by the Town shall be immediately payable by the applicant. If no escrow was required, or if

the Town's costs exceed the escrowed amount, the Town will provide the applicant a written statement of the amount to be reimbursed. The stated amount shall be paid in full to the Town within 30 days from the date of the written statement. If the escrowed amount exceeds the Town's costs, the excess shall be refunded to the applicant. No permits shall be issued, no construction or development shall commence, and no use of the property pursuant to the zoning request shall be made until all fees and costs are paid in full. In the event that payment of costs is not made within a reasonable time after demand, the Town Board or Zoning Administrator may take such steps as are available to the Town under law to collect the unreimbursed amounts, including collection costs. The steps the Town may take to recover its costs include, but are not limited to, placing the amount on any property the person owns in Minnesota as a service charge pursuant to Minnesota Statutes, section 366.012, filing a lien upon the subject property or other property of the applicant pursuant to Minnesota Statutes, section 514.67, or taking such other action as may be deemed appropriate to obtain full reimbursement for the Town for all costs it incurs related to the application.

ARTICLE IX

PENALTIES AND ENFORCEMENT

9.1 Enforcement and Penalties.

- a) **General Offense:** Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a maximum fine or maximum period of imprisonment, or both, as specified by Minnesota Statutes, section 609.03. A violation of this Ordinance shall include, but is not limited to, any of the following: failing, neglecting, or refusing to comply with the provisions of this Ordinance; violating any condition placed on a permit or variance issued by the Town; exceeding the scope of a permit; or knowingly making any false statements in any document required to be submitted under the provisions of this Ordinance. Each day that a violation continues shall constitute a separate offense. In the event of a violation or a threatened violation of this Ordinance, the Town Board, in addition to other remedies, may institute appropriate criminal and/or civil actions or proceedings to prevent, prosecute, restore, restrain, correct or abate such violations or threatened violations. A criminal prosecution for a violation shall not be a bar to a civil remedy.
- b) **Enforcement.** The Town Board, Zoning Administrator, and Town Board's appointed representatives have the authority to enforce this Ordinance by issuing notices of violation, cease and desist orders, citations, and taking or instituting such other lawful actions as may be needed to enforce this Ordinance and to bring a property into compliance. A violation of this Ordinance can occur regardless of whether a permit is required for a regulated activity. If a cease and desist order or stop work order is issued to stop an activity, the activity may not be resumed until

the reason for the work stoppage has been completely satisfied and the cease and desist order lifted.

- c) Costs of Enforcement. The cost of enforcement may be added to any fines or other penalties imposed as provided in Minnesota Statutes, section 366.01, subdivision 10. The Town may also collect such other reasonable costs it incurs to enforce this Ordinance by certifying the amount to the County Auditor as a service charge pursuant to Minnesota Statutes, section 366.012 for collection together with the property taxes levied against any real property the person or entity subject to the enforcement action owns in the Town. The Town will provide the property owner written notice of its intent to certify the amount on or before September 15. The amounts so certified to the County shall be subject to the same penalties, interest, and other conditions provided for the collection of property taxes.
- d) After the Fact Applications. Any application for a permit or variance required under this Ordinance that is submitted to the Town after the use was initiated or the work has commenced shall be required to pay an after-the-fact application fee, which is a multiple of the permit or variance fee as indicated in the Town's current fee schedule.

This Ordinance shall be in effect as of the first day of publication after adoption.

Adopted on the ___ day of _____, 2013.

BY THE TOWN BOARD

Town Chairperson

Attest: _____
Town Clerk