

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-111

AN ORDINANCE ADOPTING NEW SHORELAND PROVISIONS INTO THE ZONING CODE TO INCORPORATE UPDATED STANDARDS AND BEST PRACTICES FOR SEWERED ZONING DISTRICTS AND PROPERTIES IN SHORELAND AREAS.

SECTION 1. The City Council of the City of Lake Elmo hereby strikes Title XV: Land Usage; Chapter 150: General Provisions; by repealing Section 150.250 through 150.257 in their entirety.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 800 to read the following:

ARTICLE 17. SHORELAND MANAGEMENT OVERLAY DISTRICT

§154.800 Shoreland Management Overlay District

§154.800 Shoreland Management Overlay District

- A. *Purpose.* The purpose of the Shoreland Management Overlay District is to preserve and enhance the quality of surface waters and conserve the economic and natural environmental values of shorelands through the following activities:
1. Regulate placement of sanitary and waste treatment facilities on shorelands of public waters to prevent pollution of public waters and public health hazards resulting from the facilities.
 2. Regulate alteration of shorelands of public waters to prevent excessive sediment pollution, increased water runoff and excessive nutrient runoff pollution.
 3. Preserve and enhance the unique aesthetic appearance and ecological value of the shoreland.
 4. Regulate the construction of buildings and changes of land use in shorelands to minimize property damage during periods of high water.

- B. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Bluff. A topographic feature such as a hill, cliff, or embankment having the following characteristics. (An area with an average slope of less than 18% over a distance of 50 feet or more shall not be considered part of the bluff.)

1. Part or all of the feature is in a Shoreland area;
2. The slope rises at least 25 feet above the ordinary high water level of the water body;
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% or greater; and
4. The slope must drain toward the water body.

Bluff Impact Zone. A bluff and land located within 20 feet from the top of a bluff.

Boathouse. A structure designed and used solely for the storage of boats and boating equipment.

Dedicated Riparian Area. Starting at the Ordinary High Water Level (OHWL), areas dedicated to the City to be maintained in a permanent state of natural vegetation for the purposes of protecting surface waters from the impacts of land alteration and/or development activity. Permitted uses within dedicated riparian areas are noted in subsection C.7.f

D.N.R. The Minnesota Department of Natural Resources.

Land Alteration. The excavation or grading of land involving movement of earth and materials in excess of 50 yards.

Shore Impact Zone. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50% of the structure setback.

Shoreland. Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or foliage; and 300 feet from a river or stream, or the landward extend of a flood plain 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.

Water-Oriented Accessory Structure of Facility. 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 the structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

C. Shoreland Management Overlay District

1. **Shoreland Classifications.** The public waters in Table 17-1 have been classified by the commissioner of natural resources as natural environment (NE), recreational development (RD) and tributary (T) shorelands. Where noted, riparian dedication is required by the City.

Table 17-1: Shoreland Classifications

DNR ID #	Name	Location	Ordinary High Water Level	Class	150 FT ^a Riparian Dedication Required
82011601	Armstrong (north of CSAH 10)	Sec 28, T29, R21	1020.3	NE	No
82011602	Armstrong (south of CSAH 10)	Sec 28, T29, R21	1019.3	NE	No
82009900	Clear	Sec 2 & 11, T29, R21	-	NE	No
82010100	DeMontreville	Sec 4, 5 & 9, T29, R21	929.3	RD	No
82011000	Downs	Sec 24, T29, R21	889.1	NE	No
82010900	Eagle Point	Sec 22 & 27, T29, R21	896.5	NE	No
82010600	Elmo	Sec 13, 14, 23, 24 & 26, T29, R21	885.6	RD	No
82010800	Friedrich Pond	Sec 15 & 22, T29, R21	-	NE	No
82011300	Goose	Sec 27, 34 & 35, T29, R21	924.4	NE	Yes
82011100	H.J. Brown Pond	Sec 26, T29, R21	-	NE	No
82007400	Horseshoe	Sec 25, T29, R21	876.8	NE	No
82010400	Jane	Sec 9 & 10, T29, R21	924.0	RD	No

82011700	Kramer	Sec 35, T29, R21	-	NE	Yes
82041900	Margaret	Sec 26, T29, R21	-	NE	No
82010300	Olson	Sec 8 & 9, T29, R21	929.3	RD	No
N/A	Raleigh Creek North (to Eagle Point Lake)	Sec 16, 21 & 22, T29, R21	-	T	No
N/A	Raleigh Creek South (Eagle Point Lake to Lake Elmo)	Sec 22, 23 & 227, T29, R21	-	T	No
82011200	Rose	Sec 25 & 36, T29, R21	-	NE	No
82010700	Sunfish	Sec 14, T29, R21	896.4	NE	No
82010000	Unnamed	Sec 4, T29, R21	-	NE	No
82031300	Unnamed	Sec 12, T29, R21	-	NE	No
82041700	Unnamed	Sec 25, T29, R21	-	NE	No
82048400	Unnamed	Sec 11, T29, R21	-	NE	No
N/A	Unnamed to Wilmes Lake	Sec 33, T29, R21	-	T	No
N/A	Unnamed Tributary	Sec 25, T29, R21	-	T	No

Classifications

RD = Recreational Development Lake Classification

NE = Natural Environment Lake Classification

T = Tributary River Classification

Notes to Table 17-1:

- a. As measured from and perpendicular to the ordinary high water level (OHWL)

2. Land Uses in Shoreland Districts. All uses of land shall be regulated by the applicable zoning district subject to applicable conditions. Notwithstanding the underlying zoning district, the following uses shall be regulated in shoreland districts as specified in Table 17-2:

Table 17-2: Permitted (P), Conditional (C) and Interim (I) Uses, Shoreland Classifications

Land Uses	Shoreland Classification		
	Recreational Development	Natural Environment	Tributary River
Residential	P	P	P
Commercial	P	C	C
Public and Civic Uses	P	C	C
Outdoor Recreation ^a	C	C	C
Agricultural and Related Uses ^b	P	P	P
Industrial and Extractive Uses	-	-	-
Utilities, Transportation and Communications	C	C	C
Accessory Uses	P	P	P
Planned Developments (PUDs)	C	C	C

Notes to Table 17-2:

- a. City owned parks and open space and any uses or structures accessory to such uses are permitted within shoreland areas.
- b. Vegetative clearing within shore and bluff impact zones and on steep slopes is not permitted.

3. *Shoreland Standards.* The following standards in Table 17-3 shall apply within shoreland areas to principal, conditional and accessory uses and structures:

Table 17-3: Shoreland Standards

Standards	Shoreland Classification		
	Recreational Development	Natural Environment	Tributary River
Minimum structure setback from County, State or Federal road right-of-way	50 feet	50 feet	50 feet
Minimum structure setback from an unplatted cemetery or historical site ^a	50 feet	50 feet	50 feet
Minimum structure setback from the Ordinary High Water Level (OHWL) ^{b, c}			
Riparian dedication required	200 feet	200 feet	200 feet
Riparian dedication not required ^d			
Sewered	75 feet	100 feet	75 feet
Unsewered	100 feet	150 feet	100 feet
Minimum structure setback from top of bluff	30 feet	30 feet	30 feet
Minimum septic system setback from OHWL	75 feet	150 feet	75 feet
Minimum low floor elevation above the 100-year flood elevation	2 feet	2 feet	2 feet
Maximum impervious lot coverage			
With riparian dedication	50%	50%	50%
Without riparian dedication			
Sewered ^e	30%	30%	30%
Unsewered	15% or 6,000 square feet (sf), whichever is larger		
Minimum lot size ^f , riparian lots			
Riparian dedication required	Same as zoning district		
Riparian dedication not required, sewerd			
Single family detached	20,000 sf	40,000 sf	Same as zoning district
Two-family or duplex	35,000 sf	70,000 sf	
Riparian dedication not required, unsewered			
Single family detached	40,000 sf	80,000 sf	Same as zoning district
Minimum lot size ^f , non-riparian lots			
Riparian dedication required	Same as zoning district		
Riparian dedication not required, sewerd			
Single family detached	15,000 sf	20,000 sf	Same as zoning

Two-family or duplex	17,500 sf	26,000 sf	district
Riparian dedication not required, unsewered			
Single family detached	40,000 sf	80,000 sf	Same as zoning district
Minimum lot width^f			
Riparian dedication required	Same as zoning district		
Riparian dedication not required, sewered			
Single family detached	80 feet	125 feet	80 feet
Two-family or duplex	135 feet	225 feet	115 feet

Notes to Table 17-3:

- a. Reduction of the required setback from a historic site is permitted with the approval of the office of the Minnesota State Archeologist.
- b. Where structures exist on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the Ordinary High Water Level (OHWL), provided the proposed building is not located in a shore impact zone or bluff impact zone.
- c. With the exception of public crossings of public waters, roads, driveways and parking areas shall meet the minimum structure setback. Where no alternative exists, such improvements may be placed within the required structure setbacks provided they are designed to adapt to the natural landscape, soil erosion is minimized and no construction shall occur in shore or bluff impact zones. Exceptions to setback requirements must comply with the rules and regulations of local watershed districts.
- d. Commercial and public and civic uses with public waters frontage shall be setback double the required setback or be substantially screened from the water by vegetation or topography, assuming summer, leaf-on conditions.
- e. The maximum amount of impervious surface allowed for sewered lots zoned Rural Single Family (RS) is 15% of lot area or 6,000 sf, whichever is larger.
- f. Minimum lot size and width requirements apply to residential uses only.

4. Design Criteria for Structures

- a. *Water Oriented Accessory Structures.* Each lot may have one (1) water oriented accessory structure not meeting the normal structure setbacks if the structure complies with the following provisions:
 - i. *Structure Height.* The structure or facility must not exceed ten (10) feet in height, exclusive of safety rails, from the average grade of the structure to the peak of the roof. Detached decks must not exceed eight (8) feet above grade at any point.
 - ii. *Structure Size.* Water oriented accessory structures cannot occupy an area greater than two-hundred and fifty (250) square feet.
 - iii. *Structure Setback.* The setback of the structure or facility landward from the Ordinary High Water Level (OHWL) must be at least ten (10) feet on a recreational development lake and fifty (50) feet on a natural environment lake.
 - iv. *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.*
 - v. *The roof of the structure may be used as a deck with safety rails, but must not be enclosed or used as a storage area.*

- vi. The structure or facility must not be used for human habitation and must not contain water supply or sewage treatment facilities.
 - vii. *Watercraft Storage Facilities.* As an alternative for recreational development water bodies, water oriented accessory structures used solely for watercraft storage, and including the storage of related boating and water oriented sporting equipment, may occupy up to four hundred (400) square feet provided the maximum width of the structure is twenty (20) feet as measured parallel to the configuration of the shoreline.
- b. *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:
- i. Stairways and lifts must not exceed four (4) feet in width. Wider stairways may be used for public open space or recreation properties.
 - ii. Landings for stairways and lifts must not exceed thirty-two (32) square feet in area. Landings larger than thirty-two (32) square feet may be used for public open space or recreation properties.
 - iii. Canopies or roofs are not allowed on stairways, lifts or landings.
 - iv. Stairways, lifts and landings may be either constructed above ground on posts or pilings or placed into the ground, provided that they are designed and built in a manner that ensures control of soil erosion.
 - v. Stairways, lifts and landing 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.
 - vi. 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 subsections (i) through (v) above are satisfied.
5. *Subdivision Standards.* The following standards shall apply to subdivisions in shoreland areas:
- a. Each lot created through subdivision must be suitable in its natural state for the proposed use with minimal alteration. In determining suitability the City will 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 at large.
 - b. Subdivisions must conform to all other official controls adopted by the City of Lake Elmo. Subdivisions will not be approved that are designed so variances from one or more standards in official controls would be needed to use the lots for their intended purpose.
 - c. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of this section, 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 requirement of this section as much as possible.
6. *Agricultural Activities.* The following standards shall apply to agricultural activities in shoreland areas:
- a. The shore impact for parcels with permitted agricultural uses is equal to a line parallel to and 50 feet from the OHWL.

- b. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore impact zones are maintained in permanent vegetation or operated under an approved conservation plan (resource management systems) consistent with the field office technical guides of the local soil and water conservation district or the USDA Natural Resources Conservation Service.
 - c. Feedlots and manure storage are not permitted within the shoreland of watercourses or in bluff impact zones, and must meet a minimum setback of 300 feet from the ordinary high water level of all public water basins identified in subsection (1).
 - d. The use of pesticides, fertilizers or animal wastes within shoreland areas shall be done in such a way as to minimize impacts on shore impact zones by proper application or use of earth or vegetation.
7. *Shoreland Alterations.* The purpose of this section is to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent back slumping and protect fish and wildlife habitat. Shoreland alterations shall be allowed in accordance with the following standards:
- a. No principal or accessory structure or use shall be placed within bluff or shore impact zones other than agricultural activities as permitted by subsection (5)(b).
 - b. Shore impact zones shall be maintained in permanent vegetation or operated under an approved conservation plan consistent with the field office technical guides of the local soil and water conservation district.
 - c. *Intensive Vegetative Clearing.* Intensive vegetation clearing within shore and bluff impact zones and/or steep slopes is not permitted. Intensive clearing within shoreland areas outside of bluff or shore impact zones and steep slope areas is permitted subject to City approval of an erosion and sedimentation control plan that is consistent with the City's Storm Water and Erosion and Sediment Control Ordinance (§150.270).
 - d. *Limited Tree Clearing.* Limited clearing of trees and shrubs and the cutting, pruning and trimming of trees within bluff and shore impact zones or steep slopes to accommodate picnic areas, trails and water access and to provide a view to the water from a principal dwelling site shall be permitted provided the screening of structures, as viewed from the water, is not substantially reduced. These provisions do not apply to the removal of tree limbs or branches that are dead or pose a safety hazard.
 - e. *Grading in Shoreland Areas.* All grading and filling activities must be in conformance with the Wetland Conservation Act. Any grading or filling on steep slopes or within shore or bluff impact zones involving the movement of ten (10) or more cubic yards of material or involving more than fifty (50) cubic yards of material elsewhere in a shoreland area shall require the submission of a Grading Permit. Approval shall be granted only if the following conditions are met:
 - i. Any filling or grading in any Type 2, 3, 4, 5, 6, 7 or 8 wetland shall be in conformance with the Wetland Conservation Act of 1991 and shall require consideration of how extensively the proposed activity will affect the following functional qualities of the wetland:
 - a) Sediment and pollution trapping and retention
 - b) Storage of surface runoff to prevent or reduce flood damage
 - c) Fish and wildlife habitat and endangered plants and animals
 - d) Recreational use
 - e) Shoreline or bank stabilization
 - f) Historical significance
 - ii. The smallest amount of bare ground is exposed for the shortest time possible;

- iii. Ground cover such as mulch is used for temporary bare soil coverage and permanent ground cover, such as sod, is established;
 - iv. Methods to prevent erosion and trap sediment during construction are employed;
 - v. Altered areas are stabilized to accepted erosion control standards;
 - vi. Fill is not placed so as to create unstable slopes;
 - vii. Plans to place fill or excavated material on steep slopes are certified by qualified professionals as to slope stability;
 - viii. Alterations below the OHWL are authorized by the Commissioner of the Minnesota Department of Natural Resources per Minn. Stats. § 103G.245;
 - ix. 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 OHWL and the height of the riprap above the OHWL does not exceed three feet; and
 - x. Alterations of topography shall only be permitted if accessory to a permitted or conditional use.
- f. *Dedicated Riparian Areas.* Riparian areas dedicated to the City shall be protected from intensive development. Permitted uses include passive open space, pedestrian trails, public parks and park-related structures, facilities for public water access, fishing piers, parking lots for park users, and stormwater treatment ponds. Unless being used for active park purposes, the riparian areas shall be maintained in permanent natural vegetation.
8. *Sand and Gravel Extraction.* The following standards shall apply to sand and gravel extraction uses:
- a. Processing machinery shall be located consistent with setback standards for structures.
 - b. A site development and restoration plan shall be developed by the owner for approval by the city which addresses dust, noise, possible pollutant discharges, hours and duration of operation and anticipates vegetation and topography alterations. It shall identify actions to be taken to mitigate adverse environmental impacts and measures to be employed to restore the site after excavation.
9. *Stormwater Management.* Stormwater management shall be in accordance with the City's Storm Water and Erosion and Sediment Control Ordinance (§150.270). In addition, the Minnesota Pollution Control Agency's Minnesota Stormwater Manual shall be used as guidance. Within shoreland areas, the following standards also apply:
- a. Existing natural drainage ways, wetlands and vegetated soil surfaces must be used to convey, store, filter and retain storm water in a manner consistent with local watershed district rules and regulations 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 grading is complete and facilities or methods used to retain sediment on the site are removed.
 - c. Use of fertilizers, pesticides or animal wastes within shoreland areas must be done in a way to minimize impact on the shore impact zone or public water by proper application.
 - d. New constructed storm water outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.
10. *Private Utilities.* The following provisions shall apply in shoreland areas:
- a. Private subsurface sewage treatment systems shall meet applicable City and County requirements and Minnesota Pollution Control Agency's Chapter 7080 standards. Publicly owned sewer systems shall be used where available.

- b. Any private water supply to be used for domestic purposes shall meet quality standards established by the Minnesota Department of Health and the Minnesota Pollution Control Agency.
11. *Planned Unit Developments.* Residential planned unit developments shall be permitted in shoreland areas subject to the requirements of Article XVI of this chapter.
- a. Design criteria for planned unit developments within shoreland areas:
 - i. At least 50 percent of the total project area shall be preserved as open space. The open space computation shall not include road rights-of-way, or land covered by roads, structures or parking surfaces.
 - ii. Open space shall include areas having physical characteristics that are unsuitable for development in their natural state and areas containing significant historic sites or unplatted cemeteries.
 - iii. Open space may contain outdoor recreational facilities for use by the owners of residential units or the public.
 - iv. The appearance of open space areas, including topography, vegetation and allowable uses, shall be preserved.
 - v. PUDs shall be connected to public water supply and sewer systems.
 - vi. Before final approval of a PUD is granted, the developer/owner shall provide for the preservation and maintenance, in perpetuity, of open space and the continuation of the development as a community.
12. *Nonconformities.* Nonconformities, substandard lots and structures, and nonconforming on-site sewage treatment systems within shoreland areas shall meet the requirements specified in Article IV of this chapter.
- a. The expansion or enlargement of a riparian substandard structure shall meet the shoreland development standards set forth in subsection (3) except as follows:
 - i. The extension, enlargement or alteration of a riparian substandard structure or sanitary facility may be permitted on the side of the structure or facility facing away from the OHWL without following the variance process.
 - ii. An improvement to a riparian substandard structure or sanitary facility may be allowed to extend laterally by a conditional use permit (parallel to the OHWL) when the improvement is in compliance with the other dimensional standards of this chapter. In no case shall the improvement extend closer to the OHWL than the existing structure.
 - iii. Decks may be allowed without a variance where riparian dedication is not required, provided as follows:
 - a) A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing OHWL setback of the structure;
 - b) The deck encroachment toward the OHWL does not exceed 15 percent of the existing shoreline setback of the structure from the OHWL or does not encroach closer than 30 feet, whichever is more restrictive; and
 - c) The deck is constructed primarily of wood, and is not roofed or screened.
 - iv. If a riparian substandard structure is demolished, replacement shall comply with the dimensional standards of this section.
- C. *Required Notice to the Department of Natural Resources.* The zoning administrator shall send copies of notices of any public hearings to consider variances, plats, ordinance amendments, PUDs or conditional uses under local shoreland management controls to the commissioner of the department of natural resources or his designee at least ten days prior to the hearings. In

addition, a copy of the approved amendments, plats, variances and conditional uses shall be sent to the commissioner or his designee within ten days of the final decision.

SECTION 3. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 4. Adoption Date. This Ordinance 08-111 was adopted on this third day of June 2014, by a vote of 5 Ayes and 0 Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Adam Bell, City Clerk

This Ordinance 08-111 was published on the 11th day of June, 2014.