

## **SECTION 21.       CONDITIONAL USE AND INTERIM USE PERMITS**

### **SUBDIVISION 1.   PURPOSE**

- A. The purpose of this Section is to provide Le Sueur County with discretion in determining the suitability of certain designated uses within each district upon the public health, safety and general welfare.
- B. In making this determination, whether or not the conditional use or interim use is to be allowed, the County may consider the nature of the land upon which the use is to be located, the nature of the adjoining land or structures, whether or not a similar use is already in existence and located on the same premises, or on any adjoining roads, and all such other further factors as the County shall deem a requisite of consideration in determining the effect of such use of the public health, safety, and general welfare.

### **SUBDIVISION 2.   PROCEDURE**

- A. An application for a new Conditional or Interim Use Permit, extension, or amendment of an existing Conditional or Interim Use Permit shall be filed with the Department on an official application form. The application shall:
  - 1. Include the name and address of the applicant and/or landowner of the site and any architect, professional engineer and contractor employed by the applicant.
  - 2. Shall be accompanied by such plans, elevations and site plans as prescribed by the Planning Commission and shall be filed at least twenty (20) days prior to the hearing.
  - 3. Include any copies of any necessary State and Federal Permits.
- B. Upon receipt of the application and other prescribed materials, a time and place shall be set by the Department for a public hearing before the Planning Commission. The Planning Commission shall hold at least one (1) public hearing on the proposed Conditional or Interim Use Permit. All such hearings shall be held after the requirements of proper notice are complied with.
- C. All landowners of record within five hundred (500) feet of the affected property in incorporated areas and in unincorporated areas, owners within one-quarter (1/4) mile of the affected property, or to the ten (10) properties nearest to the affected property, whichever provides the greatest number of owners, and the affected Town Board and any municipality within two (2) miles of the affected property shall be given notice of time, date, place and purpose of the hearing on the Conditional or Interim Use Permit application at least ten (10) days, but not more than thirty (30) days, prior to the hearing. A copy of all Conditional or Interim Use Permit applications within the Shoreland and Flood Plain Overlay districts shall be forwarded to the Commissioner within ten (10) days of such action.

- D. The current records on file in the office of the County Treasurer shall be deemed sufficient for notification purposes.
- E. The failure of any landowner to receive notification or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with the notification requirements has been made.
- F. The Department shall also give notice of the time, place, and purpose of such hearing by publication in a newspaper of general circulation in the town, municipality, or other area concerned, and in the official newspaper of the County, at least ten (10) days before the hearing.
- G. The applicant or a representative thereof shall appear before the Planning Commission in order to answer questions concerning the proposed conditional or interim use.
- H. The Planning Commission and staff shall consider possible adverse effects of the proposed conditional or interim use and what additional requirements may be necessary to reduce such adverse effects. Its judgment shall be based upon the following factors to include, but not limited to:
  - 1. Relationship to County plans.
  - 2. The geographical area involved.
  - 3. Whether such use will negatively affect surrounding properties in the area in which it is proposed.
  - 4. The character of the surrounding area.
  - 5. The demonstrated need for such use.
  - 6. Whether the proposed use would cause odors, dust, flies, vermin, smoke, gas, noise, or vibration or would impose hazards to life or property in the neighborhood.
  - 7. Whether such use would inherently lead to or encourage disturbing influences in the neighborhood.
  - 8. Whether stored equipment or materials would be screened and whether there would be continuous operation within the visible range of surrounding residences.
  - 9. Abatement of Environmental Hazards as regulated in this Ordinance
  - 10. Other factors impacting the public health, safety and welfare.

- I. The Planning Commission and/or the Department shall have the authority to request additional information from the applicant and/or landowner concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant and/or landowner concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent Sections of this Ordinance.
- J. The Conditional or Interim Use Permit, which in the opinion of the Planning Commission may result in a material adverse effect on the environment, may be required by the Planning Commission to demonstrate the nature and extent of the effect.
- K. The Planning Commission shall recommend such conditions relating to the granting of said Conditional or Interim Use Permit, as they deem necessary to carry out the intent and purpose of this Ordinance or recommend that the request be denied. Such recommendation shall be in writing. The conditions may include, but are not limited to the following:
  - 1. Increasing the required lot size or yard dimension.
  - 2. Limiting the height, size, or location of the structures.
  - 3. Controlling the location, size, and number of vehicle access points.
  - 4. Increasing the street width.
  - 5. Increasing the number of required off-street parking space.
  - 6. Limiting the number, size, location, or lighting of signs.
  - 7. Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
  - 8. Designating sites for open space.
- L. The following additional evaluation criteria and conditions apply within the Shoreland and Flood Plain Overlay Districts of the County.
  - 1. **Shoreland District. Evaluation criteria.** A thorough evaluation of the water body and the topographic, vegetation, and soils conditions on the site must be made to ensure:
    - a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
    - b. The visibility of structures and other facilities as viewed from public waters is limited.
    - c. The site is adequate for water supply and on-site sewage treatment.

- d. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate this watercraft.
2. **Shoreland District. Conditions attached to Conditional or Interim Use Permits.** The Board of County Commissioners, upon consideration of the criteria listed above and the purposes of this Ordinance, shall attach such conditions to the issuance of the Conditional or Interim Use Permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:
    - a. Increased setbacks from the ordinary high water level.
    - b. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
    - c. Special provisions for the location, design, and use of structures, sewage treatment system, watercraft, launching and docking areas, and vehicle parking areas.
  3. **Flood Plain District. Evaluation Criteria.** In passing upon conditional or interim use applications, the Le Sueur County Board of Commissioners shall consider all relevant factors specified in this Ordinance, and the following:
    - a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
    - b. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
    - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
    - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
    - e. The importance of the services provided by the proposed facility to the community.
    - f. The requirements of the facility for a waterfront location.
    - g. The availability of alternative locations not subject to flooding for the proposed use.
    - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
    - i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

- j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - k. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
  - l. Such other factors which are relevant to the purpose of this Ordinance.
4. **Flood Plain Overlay District. Conditions attached to Conditional or Interim Use Permits.** Upon consideration of the factors listed above and the purpose of this Ordinance, the Board of County Commissioners, shall attach such conditions to the granting of Conditional or Interim Use Permits as it deems necessary to fulfill the purpose of this Ordinance. Such conditions may include, but are not limited to the following:
- a. Modification of waste treatment and water supply facilities.
  - b. Limitations on period of use, occupancy, and operation.
  - c. Imposition of operational controls, sureties, and deed restrictions.
  - d. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- M. The Board of County Commissioners shall not grant a Conditional or Interim Use Permit until it receives a report from the Department and a recommendation from the Planning Commission.
- N. For Conditional or Interim Use Permits recommended for approval, the Board of County Commissioners shall find all of the following:
- 1. The conditional or interim use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminishes and impairs property values within the immediate vicinity.
  - 2. The establishment of the conditional or interim use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
  - 3. The adequate utilities, access roads, drainage and other facilities have been or are being provided.
  - 4. The adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use.

5. The adequate measures have been or will be taken to prevent and control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.
- O. Following the closing of the public hearing and formulation of the Planning Commission's recommendation, the Department shall report the findings and recommendations of the Planning Commission to the Board of County Commissioners, at a regularly scheduled Board Meeting.
1. Following receipt of the findings and recommendations by the Planning Commission and notwithstanding any other law to the contrary, the Board of County Commissioners shall take action on the Conditional or Interim Use Permit within the assigned period of time as stated in Minnesota Statutes Chapter 15.99, as amended from time to time.
  2. The Board of County Commissioners shall, upon receiving no report from the Planning Commission place the request on the Board of County Commissioners agenda and decide the issue within the assigned period of time as stated in Minnesota Statutes 15.99, as amended from time to time.
  3. The Board of County Commissioners shall have the option to set and hold a public hearing in accordance with this Section, if deemed necessary, and may impose any condition it considers necessary to protect the public health, safety and general welfare.
  4. Said action of a Conditional or Interim Use Permit shall require a simple majority by the members of the Board of County Commissioners.
  5. The applicant and/or landowner for the Conditional or Interim Use Permit shall be notified in writing by the Department of the Board of Commissioner's action or decision for no action.
- P. A copy of all decisions for Conditional or Interim Use Permits within the Shoreland and Flood Plain Overlay districts shall be forwarded to the Commissioner of Natural Resources within ten (10) days of such action.

### **SUBDIVISION 3. FEES**

- A. A Conditional or Interim Use Permit, extension, and/or amendment fee shall be as established by the Board of County Commissioners, payable when the application is filed.
- B. Any outside costs for consulting services to aid the Planning Commission and/or Board of County Commissioners in making a decision on the Conditional or Interim Use Permit shall be paid by the applicant and/or landowner. Such fee shall be as determined by the Board of County Commissioners.

- C. Any additional expenses incurred by the County regarding the Environmental Review process shall be reimbursed by the applicant and/or landowner, such as but not limited to, per diems and mileage. Such fee shall be determined by the Board of County Commissioners.

#### **SUBDIVISION 4. RECONSIDERATION**

Whenever an application for a Conditional or Interim Use Permit has been considered and denied by the Board of County Commissioners, a similar application for a Conditional or Interim Use Permit affecting the same property shall not be considered again by the Planning Commission or Board of County Commissioners for at least one (1) year from the date of its denial.

#### **SUBDIVISION 5. PERMIT VALIDITY**

- A. A Conditional Use Permit shall be valid as long as the conditions attached are met. If the Department finds that specific conditions of the permit are not being met or if site conditions or activities have changed, the permit shall be brought back for review by the Planning Commission and the Board of Commissioners.
- B. An Interim Use Permit shall be valid until any of the following occur:
1. The conditions attached to the permit are no longer being met.
  2. There is a change in ownership of the property on which the Interim Use Permit was approved.
  3. The Interim Use Permit is inactive for one year or longer.
  4. The expiration date specified in the Interim Use Permit is met.
  5. An event specified in the Interim Use Permit is met.
  6. There is a change in zoning regulations as described in MN Statutes 394.03.

#### **SUBDIVISION 6. LAPSE CONDITIONAL OR INTERIM USE PERMIT BY NON-USE**

- A. After granting a Conditional or Interim Use Permit, if the work as permitted by the permit shall not have been completed within one (1) year.
1. Such permit shall become null and void unless a petition for extension of time in which to complete the work has been granted by the Board of County Commissioners.
  2. Such extension shall be requested in writing and filed with the Department at least thirty (30) days before the expiration of the original Conditional or Interim Use Permit.
  3. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the Conditional or Interim Use Permit.

4. Such petition shall be presented to the Planning Commission and Board of County Commissioners for decision.

B. In the event a Conditional or Interim Use Permit is discontinued or its approved operation is stopped for a period of one (1) year, the Conditional or Interim Use Permit shall become null and void.

#### **SUBDIVISION 7. COMPLIANCE**

A. Any use permitted under the terms of any Conditional or Interim Use Permit shall be established and conducted in conformity with the terms of such permit and of any condition designated in connection therewith.

B. All Conditional or Interim Use Permits shall be reviewed when it is brought to the attention of the Planning Commission that the applicant is deviating from any conditions or uses approved for such Conditional or Interim Use Permits. Any deviation from the conditions or uses approved shall be considered reasons for cancellation of the Conditional or Interim Use Permit by the Board of County Commissioners, after a duly called public hearing with the Planning Commission.

C. A request for a change in conditions attached to the granting of a Conditional or Interim Use Permit or a request to carry out activities not allowed by the Conditional or Interim Use Permit shall be subject to reapplication and to the procedures required for a new Conditional or Interim Use Permit application.

#### **SUBDIVISION 8. REVOCATION OF PERMIT**

A. Upon failure by the applicant and/or landowner, of an approved Conditional or Interim Use Permit pursuant to the provisions of this Ordinance, to fully comply with the provisions contained herein.

B. When same has been certified by the Department to the Board of County Commissioners.

C. The Department shall give notice to the applicant and/or landowner setting forth the provisions of this Ordinance being violated.

D. The Department shall set a time and place of a hearing to be held by the Planning Commission to consider such violation of provisions of this Ordinance.

E. If said Planning Commission find that provisions of this Ordinance have not been complied with by the permit holder, the Planning Commission may recommend revocation or suspension of the said permit to the Board of County Commissioners for final determination.

**SUBDIVISION 9. REGISTRATION**

A certified copy of any Conditional or Interim Use Permit shall be filed with the Le Sueur County Recorder by the Department. The Conditional or Interim Use Permit shall include the legal description of the property involved, owner's name, and any conditions stipulated upon approval by the Board of County Commissioners.