

Guidance for Changes to 394.36 (Counties) and 462.357 (Cities) Regarding Nonconforming Lots in Shoreland Areas

Overview: [Chapter 149, Laws of 2009](#), provides an improved framework for local government units to address development and sale of nonconforming shoreland lots. In addition, it provides clarification for nonconforming structures located closer than one half the setback to public waters when they are damaged in excess of 50% of their value.

Nonconforming lots are regulated under Minnesota Rules, Chapter 6120, which require contiguous lots to be combined if they are smaller than the size or width standard specified in Rule. There have been numerous cases where variances were brought before local governments or where grievances were brought to legislators because of the rule language. The changes to Statute include provisions that were formerly in Rule, but are now modified to allow development while still incorporating measures intended to protect water resources. These standards will be referenced or incorporated into shoreland rules when amended.

Structures not meeting setbacks from water that are being replaced after being damaged in excess of 50 % of the market value

394.36, Subd 4, (counties) and 462.357 Subd 1e (a)(2), (cities) would allow damaged structures, located closer than one half the lake or river setback (shore impact zone), to be moved away from the water if governments place reasonable and practicable conditions to mitigate impacts on adjacent property and the waterbody. (Note, this language was originally written to mandate that structures in the shore impact zone had to be moved back if it was reasonable and practicable to do so. Amendments during the legislative process resulted in an ambiguous directive regarding whether structures *must* be moved or *may* be moved, however LGU's will still have the opportunity to address the setback as well as other impacts)

Nonconforming shoreland lots are regulated according to statute

394.36, Subd 5(a) and 462.357, Subd 1e (d) requires counties and cities to use subsequent sections for repair, replacement, improvement or expansions of nonconforming uses and structures in shoreland areas. Note: Subd 5 is new.

Single nonconforming lots of record

394.36, Subd 5(b) and 462.357, Subd 1e (e) would allow development on single nonconforming lots without regard to size, provided that structure and septic setbacks are met, the lot is served by public sewer or is suitable for a Type I sewage treatment system, and 25% impervious coverage standards are met.

Two or more contiguous nonconforming lots under a common ownership

394.36, Subd 5(c) and 462.357, Subd 1e (f) an individual lot *must* be allowed as a separate lot if it is 66% or more of the width and size standard specified in shoreland rules-Chapter 6120, the lot is served by public sewer or a Type 1 sewage treatment system (no tanks), impervious coverage does not exceed 25% and consistent with comp plan if one exists.

Contiguous lots not meeting the standards of part 5(c) or part 1e (f) must be combined

394.36, Subd 5 (d) and 462.357, Subd 1e (g) require that a lot not meeting the requirements of 5(c) or 1e (f) *must* be combined to create one or more conforming lots as much as possible.

Contiguous lots with dwellings can be sold or purchased separately

394.36 Subd 5 (e) and 462.357, Subd 1e (h) the sale or purchase *must* be allowed for contiguous lots where each lot has a habitable dwelling at the time the lots come under common ownership if the lots are served by public sewer or a sewage treatment system consistent with MS 115.55 and Minn. Rule Chapter 7080 (holding tanks are allowed with operation plan and alarm).

Government units shall require mitigation measures for all variances, permits and conditional uses

394.36 Subd. 5 (f) and 462.357 Subd 1e (i) When evaluating variances, conditional uses, building or zoning permits, the LGU shall require owner to address impacts, stormwater management, BMP's, etc.

Conforming lots may sell a portion of the lot to an adjoining nonconforming lot

394.36 Subd 5(g) and 462.357 Subd 1e (j) A portion of a conforming lot may be separated and attached to an adjoining parcel (presumably a nonconforming one) provided that the remainder of the donor lot meets lot size and sewage treatment requirements of the zoning district for a new lot.

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