Managing Nonconforming Lots in Shoreland

Why is it important to manage nonconforming lots in shoreland areas?
The small, nonconforming lots that predate shoreland management may have been
suitable for small, seasonal cabins for which they were initially intended. However, they
are not suitable for current lakeshore uses or development trends. It is difficult for these
small lots to meet the 25% impervious surface limit in state shoreland standards provide
space for a backup septic system, and provide enough vegetation to filter and treat
stormwater. Development of small lots increases the risk of nutrient flow into surface
waters and degraded water quality. Small lots also increase the risk of drainage problems
between lots and harm to near shore habitat from docks placed too close together.

Regulating the development and sale of nonconforming lots in shorelands can be complicated.
Nonconforming shoreland lots must be managed in conformance with state statute, which supersedes
some standards in the 1989 shoreland rules and potentially in some county and city ordinances. In 2009,
the Legislature made two changes to statute affecting the sale and development of nonconforming lots
in shorelands.¹ These changes were made to insure that the sale and development of shoreland is
consistently administered across the state.

The changes affect:

1. When variances are not needed for single nonconforming lots of record;
2. When contiguous lots under common ownership must be combined.

When variances are not needed for single nonconforming lots of record

The revised statute states that single nonconforming lots of record may be allowed as building sites
without a variance from lot size requirements (the minimum lot size requirements in state rule unless
the local standard is stricter) when:

1. all structure & septic system setbacks are met;
2. a type 1 sewage treatment system can be installed or a connection can be made to a public sewer; and
3. impervious surface does not exceed 25%.

¹ The same changes were made to MS 394.36 (for counties) and MS 462.357 (for cities).
If all of these conditions cannot be met, then a variance is required and the local government processes
that variance according to its variance procedures and statutory criteria. The statute does not require
that these three criteria be met to approve a variance, though minimizing deviations from these
standards is a good idea. The statute simply provides local governments with an expedited manner for
approving the development of nonconforming shoreland lots of record. (Of course, local governments
may be stricter and require a variance for developing nonconforming lots, even if they do meet the
three criteria.) These statutory provisions supersede relevant parts of Minnesota Rules 6120.3300 Subp.
2D.

When contiguous lots under common ownership must be combined

Statute allows owners of most contiguous nonconforming shoreland lots to sell and develop them
according to local regulations. Statute only affects the treatment of the smallest nonconforming lots.
According to statute, an individual nonconforming lot that is part of a contiguous group of lots under
common ownership must be considered a separate parcel for sale or development, if:

1. the lot is at least 66% of lot area and width requirements in state rule (6120.3300 Subp. 2a);
2. the lot is connected to a public sewer or a Type 1 sewage system;
3. the impervious surface does not exceed 25%; and
4. the development is consistent with the comprehensive plan.

If the lot does not meet all of these criteria, then the statute states that the lot MUST be combined with one or more of
the contiguous lots so they equal a conforming lot as much as possible. Because the statute is mandatory, local
governments cannot grant a variance to this statute2.

However, the statutes include an “out” for the sale of certain lots. Contiguous lots under common ownership that don’t
meet the above four criteria may be sold (but not developed), if they contained a habitable residential dwelling
at the time they came under common ownership, and:

1. the lots are suitable for, or served by, a sewage system consistent with MR 7080, or
2. they are connected to a public sewer.

2 Local governments cannot grant variances to mandatory statutes. Although Minnesota Statute (Section
394.27, Subd. 7 for counties and Section 462.357 Subd. 6 for cities) permits local governments
to grant variances, the authority extends only to variances from “official controls” or “zoning ordinances.”
Official controls and zoning ordinances are defined as actions taken by local governments
that are adopted by ordinance. Neither statute authorizes local governments to grant variances to a
mandatory statutory requirement.
The statutes apply regardless of the subdivision process used to create the lots or when the lots were created. The statutory provisions supersede relevant parts of 6120.3300 Subp. 2D.

**Application to Wild & Scenic River and the Lower St. Croix Riverway districts**

While the statutes refer to “shoreland” lots of record, the DNR interprets these statutes as applying to substandard lots in the Wild & Scenic River and the Lower St. Croix Riverway districts.

**Summary**

In general, Minnesota law affords a great deal of protection for the continuance, repair, replacement restoration, maintenance and improvement of legal nonconformities. Given these broad protections, it is notable that the law specifically limits these protections for small shoreland lots by stating when nonconforming shoreland lots must be combined. This is a clear signal that the Legislature intended to eliminate small nonconforming lots in certain situations. Local governments should review their ordinances for compliance with Minnesota Law governing nonconforming lots in shoreland areas.