

Section 530 – Shoreland Management Regulations

530.01 Statutory Authorization and Policy. Subdivision 1. Statutory Authorization. This Shoreland Ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103, Minnesota Regulations, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

Subd. 2. Policy. The uncontrolled use of shorelands of Brainerd, Minnesota affects the public health, safety, and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City of Brainerd.

530.03 General Provisions and Definitions. Subdivision 1. Jurisdiction. The provisions of this Ordinance shall apply to the shorelands of the public water bodies as classified in Section 530.07 of this ordinance and to private water bodies greater than 10 acres in size. For the purposes of this ordinance, “public waters” includes private water bodies greater than 10 acres in size.

Subd. 2. Compliance. The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this ordinance and other applicable regulations.

Subd. 3. Enforcement. The Zoning Administrator is responsible for the administration and tracking of the enforcement of this Ordinance. Any violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this Ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to Section 530.05, Subd. 1 of this Ordinance.

Subd. 4. Interpretation. In their interpretation based on the most current information available and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

Subd. 5. 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.

Subd. 6. Abrogation and Greater Restrictions. It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other Ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only and the stricter state guidelines shall apply.

Subd. 7. Definitions. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application. For the purpose of this Ordinance, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

- a) Accessory structure or facility. "Accessory structure" or "facility" means any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.
- b) Bluff. "Bluff" means a topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):
 - 1) Part or all of the feature is located in a shoreland area;
 - 2) The slope rises at least 25 feet above the ordinary high water level of the waterbody;
 - 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 percent or greater; and
 - 4) The slope must drain toward the waterbody.
- c) Bluff impact zone. "Bluff impact zone" means a bluff and land located within 20 feet from the top of a bluff.
- d) Boathouse. "Boathouse" means a structure designed and used solely for the storage of boats or boating equipment.

- e) Building line. "Building line" means a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.
- f) Commercial planned unit developments. "Commercial planned unit developments" are typically uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are commercial planned unit developments.
- g) Commercial use. "Commercial use" means the principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.
- h) Commissioner. "Commissioner" means the commissioner of the Department of Natural Resources.
- i) Conditional use. "Conditional use" means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the Zoning Ordinance exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.
- j) Deck. "Deck" means a horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet above ground.
- k) Duplex, triplex, and quad. "Duplex," triplex," and "quad" means a dwelling structure on a single lot, having two, three, and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.
- l) Dwelling site. "Dwelling site" means a designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.
- m) Dwelling unit. "Dwelling unit" means any structure or portion of a structure, or other shelter designed as short- or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, and resort rooms and cabins.

- n) Extractive use. "Extractive use" means the use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, sections 93.44 to 93.51.
- o) Forest land conversion. "Forest land conversion" means the clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.
- p) Guest cottage. "Guest cottage" means a structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.
- q) Hardship. "Hardship" means the same as that term is defined in Minnesota Statutes, Chapter 394 (for counties) or Chapter 462 (for municipalities).
- r) Height of building. "Height of building" means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.
- s) Industrial use. "Industrial use" means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.
- t) Intensive vegetation clearing. "Intensive vegetation clearing" means the complete removal of trees or shrubs or ground cover in a contiguous patch, strip, row, or block.
- u) Lot. "Lot" means a parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.
- v) Lot width. "Lot width" means the shortest horizontal distance between lot lines measured at the building line or the ordinary high water level, whichever is less.
- w) Nonconformity. "Nonconformity" means any legal use, structure or parcel of land already in existence, recorded, or authorized before January 1, 2002 and the adoption of any applicable official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

- x) Ordinary high water level. "Ordinary high water level" means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool as defined on dam management operators or on deeds.
- y) Planned unit development. "Planned unit development" means a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses. These developments may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses.
- z) Public waters. "Public waters" means any waters as defined in Minnesota Statutes, Section 103G.005, Subdivision 15.
- aa) Residential planned unit development. "Residential planned unit development" means a use where the nature of residency is nontransient and the major or primary focus of the development is not service-oriented. For example, residential apartments, manufactured home parks, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments. To qualify as a residential planned unit development, a development must contain at least five dwelling units or sites and a minimum of two or more principal structures.
- bb) Semipublic use. "Semipublic use" means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.
- cc) Sensitive resource management. "Sensitive resource management" means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

- dd) Setback. "Setback" means the minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.
- ee) Sewage treatment system. "Sewage treatment system" means a septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Section 530.09 of this Ordinance.
- ff) Sewer system. "Sewer system" means pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.
- gg) Shore impact zone. "Shore impact zone" means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.
- hh) Shoreland. "Shoreland" means land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain 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.
- ii) Significant historic site. "Significant historic site" means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the Director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.
- jj) Steep slope. "Steep slope" means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance. Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more that are not bluffs.

- kk) Structure. "Structure" means any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.
- ll) Subdivision. "Subdivision" means land that is divided for the purpose of sale, rent, or lease, including planned unit developments.
- mm) Surface water-oriented commercial use. "Surface water-oriented commercial use" means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.
- nn) Toe of the bluff. "Toe of the bluff" means the lower point of a 50-foot segment with an average slope exceeding 18 percent.
- oo) Top of the bluff. "Top of the bluff" means the higher point of a 50-foot segment with an average slope exceeding 18 percent.
- pp) Variance. "Variance" means the same as that term is defined or described in Minnesota Statutes, Chapter 394 (for counties) or Chapter 462 (for municipalities).
- qq) Water-oriented accessory structure or facility. "Water-oriented accessory structure or facility" means 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 such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.
- rr) Wetland. "Wetland" means a surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition).

530.05

Administration. Subdivision 1. Permits Required.

- a) A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks and signs), the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by Section 530.09, Subd. 3 of this Ordinance. Application for a permit shall be made to the Zoning Administrator and or Building Official on the forms provided. The application shall include the necessary information so that the Zoning Administrator can determine the site's suitability (ie. Such as slopes, soils, fragile vegetation, topography, and etc.) for the intended use and that a compliant sewage treatment system will be provided.

- b) A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by 530.09 Subd. 8, shall be reconstructed or replaced in accordance with the provisions of this Ordinance.

Subd. 2. Certificate of Occupancy. The Building Official shall issue a Certificate of Occupancy for each activity requiring a permit as specified in Section 530.05, Subd. 1 of this Ordinance. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this Ordinance and shall be punishable as provided in Section 530.03, Subd. 3 of this Ordinance.

Subd. 3. Variances.

- a) Variances may only be granted in accordance with Minnesota Statutes, Chapter 462, as applicable. A variance may not circumvent the general purposes and intent of this ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the Planning Commission must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.
- b) The Planning Commission shall hear and decide requests for variances in accordance with public health, safety, wellbeing, and the rules that it has adopted for the conduct of business. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Section 530.05, Subd. 4 b), below shall also include the Planning Commission's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.
- c) For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

Subd. 4. Notifications to the Department of Natural Resources.

- a) Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.
- b) A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked within ten days of final action.

530.07 Shoreland Classification System and Land Use Districts. Subdivision 1. Shoreland Classification System. The public waters of the City of Brainerd have been classified below consistent with the criteria found in Minnesota Regulations, Part 67120.3300, and the Protected Waters inventory Map for Crow Wing county, Minnesota.

- a) The shoreland area for the water bodies listed in Sections 530.05, Subd. 1 (b) and 530.05 Subd. 1 (c) shall be as defined in Section 530.03 Subd. 7 (hh) and as shown on the Official Zoning map.

b) Lakes

Protected Waters Inventory ID Number

- | | |
|--|--|
| <ul style="list-style-type: none"> 1) General Development Lakes
(list here and designate on official Zoning map) 2) Natural Environment Lakes
(list here and designate on official zoning map) | <p>Rice Lake: 18-145
 Gilbert Lake: 18-320
 1 unnamed lake: 18-537</p> <p>Mud Lake: 18-321
 Sec 29 and 30 T1234N R28W</p> <p>Buffalo Lake: 18-152
 Sec 2 and 3 T44N R31W</p> <p>1 unnamed lake: 18-535</p> |
|--|--|

c) Rivers and Streams

Legal Description

- | | |
|---|--|
| <ul style="list-style-type: none"> 1) Forested Rivers
(list river names here and show boundaries of district on official zoning map) | <p>Mississippi River:
 T45N R30W Sect 18,19
 T45N R31W Sect 24,25,35,36
 T133 R28W Sect 4,9
 T134 R28W Sect 34</p> |
|---|--|

- 2) Tributary Streams
(list stream names here and
show boundaries of district
on official zoning map)

Little Buffalo Creek
T45N R31W Sect 35,36
T45N R30W Sect 31

Tributary to Lt Buffalo Creek
T45N R30W Sect 31
T44N R30W Sect 6

Gilbert Lake Creek
T134 R28W Sect 28

* All protected watercourses in the City of Brainerd shown on the Protected Waters Inventory Map for Crow Wing County, a copy of which is hereby adopted by reference, not given a classification in this Section shall be considered "Tributary".

Subd. 2. Land Use District Descriptions.

- a) Criteria For Designation. The land use districts in Section 530.07, and the delineation of a land use district's boundaries on the Official Zoning Map, must be consistent with the goals, policies, and objectives of the comprehensive land use plan (when available) and the following criteria, considerations, and objectives:

1) General Considerations and Criteria for All Land Uses:

- a) Preservation of natural areas;
- b) Present ownership and development of shoreland areas;
- c) Shoreland soil types and their engineering capabilities;
- d) Topographic characteristics;
- e) Vegetative cover;
- f) In-water physical characteristics, values, and constraints;
- g) Recreational use of the surface water;
- h) Road and service center accessibility;
- i) Socioeconomic development needs and plans as they involve water and related land resources;

- j) The land requirements of industry which, by its nature, requires location in shoreland areas;
- k) The necessity to preserve and restore certain areas having significant historical or ecological value; and
- l) Collaboration with adjacent governing bodies sharing common shorelines.

2) Factors and Criteria for Planned Unit Developments:

- a) existing recreational use of the surface water and likely increases in use associated with planned unit developments;
- b) physical and aesthetic impacts of increased density;
- c) suitability of lands for the planned unit development approach;
- d) level of current development in the area; and
- e) amounts and types of ownership of undeveloped lands.

b) Land Use District Descriptions. The land use districts provided below, and the allowable land uses therein for the given classifications of water bodies, shall be properly delineated on the Official Zoning Map for the shorelands of this community. These land use districts are in conformance with the criteria specified in Minnesota Regulation, Part 6120.3200, Subd. 3:

1) Land Use Districts for Lakes

	General Development Lakes	Natural Environment Lakes
--	---------------------------------	---------------------------------

a) R-A, R-F, R-1, and R-2 Residential District – Uses

Single residential	P	P
Semipublic	C	C
Parks & Historic Sites	C	C
Extractive Use	C	C
Duplex, Triplex, Quad Residential ***	P	C
Forest Management	P	P
Mining of Metallic Minerals	C	C
Mining of Peat	N	N
Residential PUD	C	C

General Development Lakes	Natural Environment Lakes
---------------------------------	---------------------------------

b) R-3 Multi-Family Residential District – Uses

Residential Planned		
Unit Developments	C	C
Single Residential	P	P
Semipublic	C	C
Parks & Historic Sites	C	C
Duplex, Triplex, Quad		
Residential ***	P	P
Forest Management	P	P

*** Subject to appropriate zoning

c) B-1, B-2, B-3, and B-4 – Uses

Surface Water-Oriented		
Commercial	P	C
Commercial Planned Unit		
Development	C	C
Public, Semipublic	C	C
Parks & Historic Sites	C	C
Forest Management	P	P

d) I-1 and I-2 Industrial Districts – Uses

Commercial	C	C
Commercial Planned Unit		
Development	C	C
Industrial	C	N
Public, Semipublic	P	P
Extractive Use	C	C
Parks & Historic Sites	C	C
Forest Management	P	P
Mining of Metallic		
Minerals	C	C
Mining of Peat	N	N

2) Land Use Districts for Rivers and Streams

	Forested	Tributary
a) R-A, R-F, R-1, R-2 Residential District – Uses		
Single Residential	P	P
Semipublic	C	P
Parks & Historic Sites	C	P
Extractive use	C	C
Duplex	C	C
Forest Management	P	C
Mining of Metallic Minerals	C	C
Mining of Peat	N	N

b) R-3 Multi-Family Residential – Uses		
Residential Planned Unit		
Developments	C	C
Single Residential	P	P
Surface Water Oriented		
Commercial *	C	C
Semipublic	C	C
Parks & Historic Sites	C	C
Duplex, Triplex, Quad		
Residential	P	P
Forest Management	P	P
Mining of Metallic Minerals	C	C
Mining of Peat	N	N

* As accessory to a residential planned unit development

c) B-1, B-2, B-3, B-4 – Uses		
Surface Water-Oriented		
Commercial	C	C
Commercial Planned Unit		
Development *	C	C
Public, Semipublic	C	P
Parks & Historic Sites	C	C
Forest Management	P	P
Mining of Metallic Minerals	C	C
Mining of Peat	N	N

* As accessory to a residential planned unit development

	Forested	Tributary
d) I-1 and I-2 Industrial – Uses		
Commercial	C	C
Commercial Planned Unit Development **	C	C
Industrial	C	C
Public, Semipublic	C	C
Extractive Use	C	C
Parks & Historic Sites	C	C
Forest Management	P	P
Mining of Metallic Minerals	C	C
Mining of Peat	N	N

** Limited expansion of a planned unit development involving up to six additional dwelling units or sites may be allowed as a conditional use provided the provisions of Section 530.15 of this ordinance are satisfied.

3) Use and Upgrading of Inconsistent Land Use Districts.

- a) The land use districts adopted in Ordinance Number 812, Section 515.37 – 515.39, as they apply to shoreland areas, and their delineated boundaries on the Official Zoning Map, are not consistent with the land use district designation criteria specified in Section 530.07 herein. These inconsistent land use district designations may continue until revisions are proposed to change either the land use district designation within an existing land use district boundary shown on the Official Zoning Map or to modify the boundary of an existing land use district shown on the Official Zoning Map.
- b) When a revision is proposed to an inconsistent land use district provision, the following additional criteria and procedures along with a Conditional Use Permit application shall apply:
 - 1) For Lakes. When a revision to a land use district designation on a lake is considered, the land use district boundaries and use provisions therein for all the shoreland areas within the jurisdiction of this Ordinance on said lake must be revised to make them substantially compatible with the framework in Sections 530.07 of this Ordinance.

- 2) For Rivers and Streams. When a revision to a land use district designation on a river or stream is proposed, the land use district boundaries and the use provisions therein for all shoreland on both sides of the river or stream within the same classification within the jurisdiction of this Ordinance must be revised to make them substantially compatible with the framework in Sections 530.07 of this Ordinance. If the same river classification is contiguous for more than a five-mile segment, only the shoreland for a distance of 2.5 miles upstream and downstream, or to the class boundary if closer, need be evaluated and revised.
- c) When an interpretation question arises about whether a specific land use fits within a given "use" category the interpretation shall be made by the Board of Adjustment. When a question arises as to whether a land use district's boundaries are properly delineated on the Official Zoning Map, this decision shall be made by the City Council.
- d) When a revision is proposed to an inconsistent land use district provision by an individual party or landowner, this individual party or landowner will only be responsible to provide the supporting and/or substantiating information for the specific parcel in question. The City Council will direct the Zoning Administrator to provide such additional information for this water body as is necessary to satisfy Items A and B above.
- e) The City Council must make a detailed finding of fact and conclusion when taking final action that this revision, and the upgrading of any inconsistent land use district designations on said water body, are consistent with the enumerated criteria and use provisions of Section 530.07, Subd. 2.

530.09 Zoning and Water Supply/Sanitary Provisions. Subdivision 1. Lot Area and Width Standards. The lot area (in square feet) and lot width standards (in feet) for single, duplex, triplex, and quad residential lots created after the date of enactment of this ordinance for the lake and river/stream classifications are the following:

a) Non-Sewered Lakes

1) General Development

	<u>Riparian Lots</u>		<u>Non-Riparian Lots</u>	
	Area	Width	Area	Width
Single	40,000	100	40,000	150
Duplex*	40,000	180	80,000	265
Triplex*	60,000	260	120,000	375
Quad*	80,000	340	160,000	490

2) Natural Environment

	<u>Riparian Lots</u>		<u>Non-Riparian Lots</u>	
	Area	Width	Area	Width
Single	80,000	200	80,000	200
Duplex*	120,000	300	160,000	400
Triplex*	160,000	400	240,000	600
Quad*	200,000	500	320,000	800

b) Sewered Lakes

1) General Development

	<u>Riparian Lots</u>		<u>Non-Riparian Lots</u>	
	Area	Width	Area	Width
Single	20,000	100	10,000	75
Duplex*	26,000	135	17,500	135
Triplex*	38,000	195	25,000	190
Quad*	49,000	255	32,500	245

* If zoned for multiple family

2) Natural Environment

	<u>Riparian Lots</u>		<u>Non-Riparian Lots</u>	
	Area	Width	Area	Width
Single	40,000	125	20,000	125
Duplex*	70,000	225	35,000	220
Triplex*	100,000	325	52,000	315
Quad*	130,000	425	65,000	410

* If zoned for multiple family

c) River/Stream Lot Width Standards

There are no minimum lot size requirements for rivers and streams. The lot width standards for single, duplex, triplex, and quad residential developments for the six-river/stream classifications are:

	<u>Forested</u>	<u>Tributary No Sewer</u>	<u>Tributary Sewer</u>
	Single	200	100
Duplex*	300	150	150
Triplex*	400	200	200
Quad*	500	250	250

d) Additional Special Provisions

- 1) Residential subdivisions with dwelling unit densities exceeding those in the tables in Sections 530.13 (Subdivision and Platting) can only be allowed if designed and approved as residential planned unit developments under Section 530.15 of this Ordinance. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building line. The sewer lot area dimensions in Section 530.09 can only be used if publicly owned sewer system service is available to the property.
- 2) Subdivisions of duplexes, triplexes, and quads on Natural Environment Lakes must also meet the following standards:
 - a) Each building must be set back at least 200 feet from the ordinary high water level;

- b) Each building must have common sewage treatment and water systems in one location and serve all dwelling units in the building;
 - c) Watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units in the building; and
 - d) No more than 25 percent of a lake's shoreline can be in duplex, triplex, or quad developments.
- 3) One guest cottage may be allowed on lots meeting or exceeding the duplex lot area and width dimensions and zoning as presented in Section 530.09, provided the following standards are met:
- a) For lots exceeding the minimum lot dimensions of duplex lots, the guest cottage must be located within the smallest duplex-sized lot that could be created including the principal dwelling unit;
 - b) A guest cottage must not cover more than 700 square feet of land surface and must not exceed 15 feet in height; and
 - c) A guest cottage must be located or designed to reduce its visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer leaf-on conditions.
- 4) Controlled Access Lots (access to public waters or recreation areas for use by owners of non riparian lots within subdivisions) are prohibited.

Subd. 2. Placement, Design, and Height of Structures.

- a) Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered with a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows.
 - 1) Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level*.

Classes of Public Waters	Setbacks*		
	Structures Unsewered	Sewered	Sewage Treatment System
Lakes			
General Development	75	75	75
Natural Environment	150	150	150
Rivers Remote	200	200	150
Forested	150	150	100
Tributary	100	75	75

2) Additional Structure Setbacks. The following additional structure setbacks apply, regardless of the classification of the water body:

Setback From;	Setback (in feet)
Top of Bluff;	30
Unplatted Cemetery;	50
Right-of-way line of federal, state, or county highway; and	50
Right-of-way line of town road, public street, or other roads or streets not classified	50

3) Bluff Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

4) Uses Without Water-oriented Needs. Uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

b) Design Criteria for Structures.

- 1) High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows:
 - a) for lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;
 - b) for rivers and streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with parts 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and
 - c) water-oriented accessory structures are prohibited.
- 2) 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:
 - a) stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned unit developments;
 - b) landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open-space recreational properties, and planned unit developments;
 - c) stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;

- d) stairways, lifts, and landings 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; and
 - e) 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 items 1 to 5 are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.
- 3) Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.
- 4) Steep and long gradual Slopes. The City Engineer must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer leaf-on vegetation.
- c) Height of Structures. All structures in residential districts, except churches and nonresidential agricultural structures, must not exceed 25 feet in height.

Subd. 3. Shoreland Alterations. Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.

- a) Vegetation Alterations.
- 1) Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 530.09 of this Ordinance are exempt from the vegetation alteration standards that follow:
 - 2) Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Sections 530.09, respectfully, is allowed subject to the following standards:

- a) Intensive vegetation clearing within the shore and bluff impact zones and on steep and long gradual slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.
 - b) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, and beach and watercraft access areas, provided that:
 - 1) the screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;
 - 2) along rivers, existing shading of water surfaces is preserved; and
 - 3) the above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.
- b) Topographic Alterations/Grading and Filling.
- 1) Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
 - 2) Public roads and parking areas are regulated by Section 530.09 of this Ordinance.
 - 3) Notwithstanding, a grading and filling permit will be required for:
 - a) The movement of any material on steep slopes or within shore or bluff impact zones: and

- b) the movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.
- 4) The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
- a) Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland*:
 - 1) Sediment and pollutant trapping and retention;
 - 2) Storage of surface runoff to prevent or reduce flood damage;
 - 3) Fish and wildlife habitat;
 - 4) Recreational use;
 - 5) Shoreline or bank stabilization; and
 - 6) Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.

* This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised.

- b) Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
- c) Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;
- d) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;

- e) Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
 - f) Fill or excavated material must not be placed in a manner that creates an unstable slope;
 - g) Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;
 - h) Fill or excavated material must not be placed in bluff impact zones;
 - i) Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 103G;
 - j) Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
 - k) 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 ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.
- 5) Connections to public waters. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the commissioner has approved the proposed connection to public waters.

Subd. 4. Placement and Design of Roads, Driveways, and Parking Areas.

- a) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

- b) Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.
- c) Public and private watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met. For private facilities, the grading and filling provisions of Section 530.09 of this ordinance must be met.

Subd. 5. Stormwater Management. The following general and specific standards shall apply:

- a) General Standards.
 - 1) When possible, existing natural drainage ways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain storm water runoff before discharge to public waters.
 - 2) 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 possible and facilities or methods used to retain sediment on the site.
 - 3) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle storm water runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.
- b) Specific Standards.
 - 1) Impervious surface coverage of lots must not exceed 25 percent of the lot area nor 0% of the Shore Impact zone.
 - 2) When constructed facilities are used for storm water management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.

- 3) New constructed storm water outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

Subd. 6. Special Provisions for Residential, Commercial, Industrial, Public/Semipublic, Agricultural, Forestry and Extractive Uses, and Mining of Metallic Minerals.

a) Standards for Residential, Commercial, Industrial, Public, and Semipublic Uses.

- 1) Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards:

- a) in addition to meeting impervious coverage limits, setbacks, and other zoning standards in this Ordinance, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures;

- b) uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need; and

- c) uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards and all other Brainerd sign standards:

- 1) no advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the County Sheriff;

- 2) signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not

be located higher than ten feet above the ground, and must not exceed 32 square feet in size unless it is zoned residential and it shall comply with Zoning Ordinance section 515.47. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and

- 3) other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights. Section 515.63 of the Brainerd Zoning Ordinance also applies.

- 2) Uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

b) Agriculture Use Standards.

- 1) General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff 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 districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.
- 2) Animal feedlots are not allowed within the Shoreland Management areas.

c) Forest Management Standards.

- 1) The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Non-point Source Pollution assessment-Forestry and the provisions of the Water Quality in Forest Management "Best Management Practices in Minnesota".

d) Extractive Use Standards.

- 1) Site Development and Restoration Plan. An extractive use site development and restoration plan must be developed, approved, and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion, and must clearly explain how the site will be rehabilitated after extractive activities end.
- 2) Setbacks for Processing Machinery. Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.

- e) Mining of Metallic Minerals. Mining of metallic minerals, as defined in Minnesota Statutes, sections 93.44 to 93.51, shall be a conditional use provided the provisions of Minnesota Statutes, sections 93.44 to 93.51, are satisfied.

Subd. 7. Conditional Uses. Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

- a) Evaluation criteria. A thorough evaluation of the water body and the topographic, vegetation, and soils conditions on the site must be made to ensure:
 - 1) the prevention of soil erosion or other possible pollution of public waters, both during and after construction;
 - 2) the visibility of structures and other facilities as viewed from public waters is limited;
 - 3) the site is adequate for water supply and on-site sewage treatment; and
 - 4) 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 these watercraft.

- b) Conditions attached to conditional use permits. The City Council, upon consideration of the criteria listed above and the purposes of this ordinance, shall attach such conditions to the issuance of the conditional use permit as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:
- 1) increased setbacks from the ordinary high water level;
 - 2) limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
 - 3) special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

Subd. 8. Water Supply and Sewage Treatment.

- a) Water Supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.
- b) Sewage treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:
 - 1) Publicly-owned sewer systems must be used where available.
 - 2) All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080", a copy of which is hereby adopted by reference and declared to be a part of this ordinance.
 - 3) On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Section 530.09, Subd. 2 of this Ordinance.
 - 4) All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in sub-items 1-4 herein. If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

530.11 Nonconformities. All legally established nonconformities as of January 1, 2002 and a legal use before the adoption of any applicable shoreland ordinance controls may continue, but they will be managed according to applicable state statutes and other regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland areas.

Subd. 1. Construction on Nonconforming Lots of Record.

- a) Lots of record in the office of the County Recorder on January 1, 2002 and conforming before any applicable controls that do not meet the requirements of Section 530.09 of this Ordinance may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, sewage treatment and setback requirements of this Ordinance are met, and all lot widths must be at least 75% of width standards.
- b) A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the board of adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
- c) If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Section 530.09 of this ordinance 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 one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 530.09 of this ordinance as much as possible.

Subd. 2. Additions/Expansions to Nonconforming Structures.

- a) All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Section 530.09 of this Ordinance.
 - 1) Such addition or expansion shall not cause the ground covered on the effective date of this Ordinance to be increased by more than 50%, measured in square feet;
 - 2) Such addition or expansion shall not cause the non-conformity existing at the time of such addition or expansion to increase in relation to any lot line or parcel boundary, ordinary high water level, treatment system, or other limiting factor in this Ordinance;

- 3) Save for those applicable to such structure, all setback and other requirements of this Ordinance shall be met upon completion of such addition or expansion;
 - 4) Accurate site plans, showing actual measured dimensions, are filed with the Planning and Zoning Administrator before such addition or expansion is built;
 - 5) A conforming sewage treatment system must exist or be installed on site to serve all livable dwellings on the lot or parcel upon which such structure is built; and
 - 6) Such structure is not a water-oriented accessory structure, screen house, gazebo, or any structure located in a bluff or shore impact zone.
 - 7) In any event it is lawful to reconstruct the roof of a structure existing on the effective date of this ordinance, as necessary to prevent leakage, without a variance, provided that the livable area of such structure, as measured in square feet as of the time of such work, shall not thereby be increased.
- b) Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:
- 1) The structure existed on the date the structure setbacks were established;
 - 2) A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
 - 3) The deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and
 - 4) The deck is constructed primarily of wood, and is not roofed or screened.

- c) Lots of record in the office of the County Recorder on January 1, 2002 and conforming before any applicable controls that do not meet the requirements of Section 530.09 of this Ordinance may be allowed to construct additions/ expansion to nonconforming structures without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this Ordinance and the requirements of Section 530.11 Subdivision 2(a) are met.

Subd. 3. Nonconforming Sewage Treatment Systems.

- a) A sewage treatment system not meeting the requirements of Section 530.09 of this Ordinance must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.
- b) The City of Brainerd will require upgrading or replacement of any nonconforming system identified by within a reasonable period of time which will not exceed 1 years. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, section 105.485, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on-site sewage treatment systems, shall be considered nonconforming. If City utilities are available the property will be required to connect to City utilities within 1-year if the sewer system is non-conforming.

530.13

Subdivision/Platting Provisions.

- a) Land Suitability. Each lot created through subdivision, including planned unit developments authorized under Section 530.15 of this Ordinance, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall 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.

- b) Consistency with Other Controls. Subdivisions must conform to all official controls of this community. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with Sections 530.09 can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Section 530.09, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks must not be approved.
- c) Information Requirements. Sufficient information must be submitted by the applicant for the community to make a determination of land suitability. The information shall include at least the following:
- 1) topographic contours at ten foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
 - 2) the surface water features required in Minnesota Statutes, Section 505.02, Subdivision 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
 - 3) adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
 - 4) information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling storm water runoff and erosion, both during and after construction activities;
 - 5) location of 100 year flood plain areas and floodway districts from existing adopted maps or data; and
 - 6) line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

- d) Dedications. When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of storm water and significant wetlands.
- e) Platting. All subdivisions shall comply with Brainerd City Code 500.09 and Minnesota State Statute 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.

530.15 Planned Unit Developments (PUD). Subdivision 1. Shoreland Planned Unit Development. Planned Unit Development (“PUD”) requires the assistance of professional planning and usually involves the approval of multiple agencies or other governmental bodies. Where circumstances are favorable, PUDs provide more latitude in land use than normal development to allow for planning, clustering facilities, consolidating green spaces, and internal recreation amenities. While densities higher than normal are often allowed, they must be justified by the preservation and consolidation of green space, increased screening and landscaping, increased recreational amenities, and other significant improvements and design features beneficial to the residents, neighbors, and the general public. The land use districts in which PUDs are an allowable use are identified in the land use district descriptions in Section 530.07 of this Ordinance and the official Zoning Map. The requirements for Commercial PUDs and Residential PUDs are the same under this Shoreland Ordinance.

- a) Mixed use PUD where appropriate, may be allowed, provided the use not normally allowed in the zoning district does not exceed 45% of the building floor area.
- b) Review Criteria. The City of Brainerd shall require a conditional use permit for all Planned Unit Developments. Approval of the permit cannot occur until the environmental review process (EAW/EIS), if required, is complete. In addition to the criteria for the granting of a conditional use permit, the City must consider the following criteria in the examination of a parcel for suitability as a PUD:
 - 1) Existing recreational use of the surface waters and likely increases in use associated with planned unit developments; and
 - 2) Physical and aesthetic impacts of increased density; and
 - 3) Suitability of lands for the planned unit development approach; and
 - 4) Level of current development in the areas; and

- 5) Amounts and types of ownership of undeveloped lands; and
- 6) Size of the parcel and amount, if any, of shoreline. A resort in existence prior to the existence of any applicable Shoreland Management Standards and January 1, 2002, but under-sized, shall also be considered for subdivision, but shall not be allowed to increase units.

c) General Requirements.

- 1) New multifamily buildings, four units or larger, shall be designed by an architect, shall be compatible in color, character and mass with surrounding land use.
- 2) New multifamily buildings shall have one-hour fire rated party floors and party walls.
- 3) All Planned Unit Developments shall be connected to municipal sewer and water. If it is determined that the extension of municipal sewer and water is not feasible, the City Council may allow the use of a conforming central sewage disposal system in compliance with MPCA 7080 regulations.
- 4) A winterized central water system shall be required.
- 5) Centralized waterfront facilities are required that do not use more than 20% of the shoreline. The number of slips allowed in a multiple dock system will be limited to one slip per unit actually allowed in the first tier.
- 6) The PUD parcel must directly abut on a public road maintained by the City.
- 7) Covenants and incorporating documents providing for a homeowners' association shall be submitted to the City prior to final approval of the PUD.
- 8) Vegetation removal shall be limited to select cutting. Select cutting means removal of dead, diseased or damaged trees or shrubs, or removal of trees for placement of structures and drives, and further removal of only individual trees to uniformly thin up to 25% of a stand on a lot or parcel of land up to 40 acres. Up to 50% of the under-story may be removed.

- 9) Internal private access roads on common property shall be allowed, if a permanent private maintenance agreement is approved by the City.
 - 10) Maintenance of all commonly owned facilities shall be by the home owner’s association.
 - 11) Storage areas for recreational equipment (boats, personal watercraft, etc.) shall be required for PUDs.
 - 12) Subdivision may be allowed by plat or condominium plat.
 - 13) Recreation facilities shall be provided as required by the Planning Commission.
 - 14) Screening and landscaping shall be provided as required by the Planning Commission. At a minimum, any PUD within the Shoreland district shall provide screening and plantings to reduce visibility of any structures from the public waters.
 - 15) Unless otherwise provided in this Section, all Shoreland PUDs shall have a minimum of five (5) acres in project area and a minimum of 400 feet of lot width at the OHW and building setback line. PUDs shall be limited to a maximum of five (5) tiers. No less than five units or sites shall be required to utilize the PUD process.
- d) Density Evaluation and Minimum Requirements for Shoreland PUDs. Shoreland dwelling unit or site density evaluation. Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures and standards.
- 1) The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high water level at the following intervals, proceeding landward:

Shoreland Tier Dimensions

	Unsewered (Feet)	Sewered (Feet)
General development lakes – first tier	200	200
General development lakes – second and additional tiers	267	267
Recreational Development lakes	267	267
Natural Environment Lakes	400	320
All Rivers	300	300

The suitable area within each tier is next calculated by excluding all wetlands, bluffs, or land below the ordinary high water level of public waters. This area is then subjected to the planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.

- 2) Shoreland PUD Density Evaluation Steps. To determine the allowable density of dwelling units or sites, the suitable area within each tier is divided by the single family residential lot size standard for lakes (see Section 530.09), which shall then be used to yield a base density of dwelling units or sites for each tier.

The City may allow some dwelling unit or site density increases for planned unit developments above the densities determined in the evaluation if all dimensional standards for the zoning district are met or exceeded. No density increases will be allowed unless the setback is increased to 150’ for GD and RD lakes and 225’ for NE lakes. Maximum density increases may only be allowed if all design criteria in Subsection E below are also met or exceeded. Increases in dwelling unit or site densities must not exceed the maximums in the following table. Allowable densities may be transferred from any tier to any other tier farther from the shoreland water body or water course, but must not be transferred to any other tier closer.

- 3) Determine whether the project is eligible for any additional density increases. To be eligible, projects must meet some of the design standards in the chart below and exceed one or more of them. The City shall decide how much, if any, increase in density to allow for each tier, but must not exceed the maximum allowable density increases listed in the following table:

Shoreland Density Increases are determined by the following Performance Standards Chart:

Performance Standard	Base Density Increased by up to
Increase Setback by 25% or Increase Setback by 50 % or No Structures in Tier 1 (Or increase setback to 150’ for GD & RD, 225’ for NE)	15% or 25% or 35%
Impervious Coverage Reduced to 20% Project-wide or Impervious Coverage Reduced to 15% Project –wide	10% or 25%
Remove All Non-Conforming Structures	10%
Approved Shoreland Restoration Plan	10%

Notes:

- 1) Density increases are maximums and are not guaranteed, unless approved by the Planning Commission.
- 2) Density increases in the above table are cumulative.
- 3) Density increases in Tier 1 cannot exceed 50%.

Allowable densities may be transferred from any tier to any other tier farther from the shoreland, lake or river, but must not be transferred to any other tier closer. No density increases will be allowed unless the setbacks for all structures are increased by at least 25% from the OHW.

e) PUD Design Criteria.

- 1) All planned unit developments must contain at least five dwelling units or sites.
- 2) Green Space Requirements. In lieu of traditional platting and lot size requirements, Green Space must be provided, including at least 50% of the total project area. The area must be owned by the Homeowners Association and provide adequate recreational opportunities for residents of the PUD. Green space shall not include dwelling units or sites, road right-of-way, or land covered by road surfaces, parking areas, or structures or developed areas. Green space must include areas with physical characteristics unsuitable for development in its natural state, and areas containing significant historic sites or unplatted cemeteries. Green space may include outdoor recreational facilities for use by owners of the dwelling units or sites, or the public. Green space must not include commercial facilities or uses, but may contain water-oriented facilities and private golf courses, trails, tennis facilities, and similar uses. Green space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems.
- 3) The shore impact zone, based on normal structure setbacks, must be included as Green space. At least 50% of the shore impact zone area of existing developments or at least 70% of the shore impact zone area of new developments must be preserved in its natural or existing state.

- 4) The appearance of green space and other common areas, including areas of unique topography, vegetation, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means. The instruments must include all of the following protections:
 - a) Commercial uses shall be prohibited;
 - b) Vegetation and topographic alterations other than maintenance shall be prohibited;
 - c) Construction of additional buildings or storage of vehicles and other materials shall be prohibited; and
 - d) Uncontrolled beaching shall be prohibited; and
 - e) Development organization and functioning: Unless an equally effective alternative community framework is established, when applicable, all planned unit developments must use an owners association with the following features:
 - 1) Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers.
 - 2) Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or sites.
 - 3) Assessments must be adjustable to accommodate changing conditions.
 - 4) The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.
 - 5) Changes in the association documents must receive prior approval by the City.
- 5) Centralization and Design of Facilities and Structures. Planned unit developments must be connected to publicly owned water supply and sewer systems, if available. On-site water supply and sewage treatment systems must be centralized and designed and installed to meet or exceed applicable standards or rules of the Minnesota Department of Health and the Minnesota Pollution Control Agency.

On-site sewage treatment systems must be located on the most suitable areas of the development, and sufficient lawn area free of limiting factors must be provided for a replacement soil treatment system for each sewage system.

- 6) Dwelling Unit Locations. Dwelling units or sites must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification: setback from the ordinary high water level, elevation above the surface water features, and maximum height. Setbacks from the ordinary high water level must be increased for developments with density increases.
- 7) Shore recreation facilities including, but not limited to, swimming areas, docks, and watercraft mooring areas and launching ramps must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each actual allowable dwelling unit or site in the first tier. Launching ramp facilities, including a small dock for loading and unloading boats and equipment, may be provided for use by occupants of dwelling units or sites located in other tiers.
- 8) Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the Planning Commission, assuming summer, leaf-on conditions.
- 9) An erosion control and storm water management plan shall be required for each Planned Unit Development. The PUD must be designed, and its construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant.

- 10) All storm water plans shall be designed and constructed to effectively manage reasonably expected quantities and qualities of storm water runoff, including a minimum of 10-year storm event. Impervious surface coverage within any tier must not exceed 25% of the tier area.
 - 11) Administration and any maintenance requirements: Prior to final approval of any planned unit developments, the City will require adequate provisions developed for preservation and maintenance in perpetuity of green spaces and for the continued existence and functioning of the development as a community.
- f) Shoreland Resort Conversions (Including the re-use of existing dwelling units or sites). The City may allow existing resorts or other land uses and facilities to be converted to residential planned unit developments if all of the following standards are met:
- 1) Proposed conversions shall be initially evaluated using the same procedures and standards presented in this part for developments involving all new construction. Inconsistencies between existing features of the development and these standards must be identified.
 - 2) Deficiencies involving water supply and sewage treatment, structure color, impervious coverage, green space, and shore recreation facilities must be corrected as part of the conversion or as specified in the conditional use permit.
 - 3) Shore and bluff impact zone deficiencies shall be evaluated and reasonable improvements made as part of the conversion. These improvements must include, where applicable, the following:
 - a) Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;
 - b) Remedial measures to correct erosion sites and improve vegetative cover and screening of buildings and other facilities as viewed from the water; and
 - c) If existing dwelling units are located in shore or bluff impact zones, conditions shall be attached to approvals of conversions that preclude exterior expansions in any dimension or substantial alterations. The conditions must also provide for future relocation of dwelling units, where feasible, to other locations, meeting all setback and elevation requirements when they are rebuilt or replaced.

- d) Existing dwelling unit or dwelling site densities that exceed standards in this part may be allowed to continue but shall not be allowed to be increased, either at the time of conversion or in the future. Efforts shall be made during the conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems, or other means.
- e) The Planning Commission has authority to determine placement of structures within the tiers, setbacks, and extent of necessary mitigating amenities.

(Added Ord. 1198 – 2003)