



CITY OF FAIRMONT – 100 Downtown Plaza – Fairmont, MN 56031

Phone (507) 238-9461

www.fairmont.org

Fax (507) 238-9469

TO: Planning Commission

FROM: Peter Bode, Planner & Zoning Official

DATE: December 2, 2022

SUBJECT: **Agenda – Regular Meeting**
Tuesday, December 6, 2022 at 5:30 p.m.
City Council Chambers, City Hall, 100 Downtown Plaza

- 1) Approval of Agenda
- 2) Approval of Minutes – October 4, 2022

New Business

- 3) Public Hearing – CUP for a Boathouse at 420 Lake Aires Rd **Page 3**
- 4) Public Hearing – Water-oriented Accessory Structures Amendment **Page 13**

Old Business

None

- 5) Adjournment

MINUTES OF THE FAIRMONT PLANNING COMMISSION

Regular Meeting

October 4, 2022 at 5:30 p.m.

City Council Chambers, City Hall, 100 Downtown Plaza

Members present: Ron Davison, Tom Lytle, Tom Mesich, Jon Omvig, Rin Porter, Council Liaison Britney Kawecki

Members absent: *None*

Staff present: City Administrator Cathy Reynolds, Planner & Zoning Official Peter Bode

Chair Lytle opened the meeting at 5:30 p.m.

Approval of Agenda: Motion by Omvig and second by Lytle to amend the agenda to include the following discussions:

1. Adoption of a shoreland management model ordinance
2. Amendment of code related to twinhomes
3. Amending code to end annual review for CUPs

On roll call, members voting yes were Omvig, Davison, and Lytle. Members voting no were Porter and Mesich. The motion carried and the agenda was amended.

Approval of Minutes: Motion by Omvig and second by Porter to approve the August 2, 2022 minutes as presented. Motion carried.

Public Hearing - CUP at 221 Krahmer Dr: Chair Lytle opened the public hearing. Bode presented a request for a conditional use permit for a boathouse at 221 Krahmer Dr and presented options for the Commission to proceed.

There were no additional public comments. Motion by Omvig and second by Mesich to close the public hearing. Motion carried.

Members discussed the proposal. Motion by Omvig and second by Mesich to recommend denial of the conditional use permit for a boathouse at 221 Krahmer Drive because the proposal would violate the City Code's 50-foot structure setback from OHWL. Motion carried.

Public Hearing - CUP at 420 Lake Aires Rd: Chair Lytle opened the public hearing. Bode presented a request for a conditional use permit for a boathouse at 420 Lake Aires Road and presented options for the Commission to proceed.

There were no additional public comments. Motion by Omvig and second by Mesich to close the public hearing. Motion carried.

Members discussed the proposal. Motion by Porter and second by Mesich to recommend denial of the conditional use permit for a boathouse at 420 Lake Aires Road because the proposal would violate the City Code's 50-foot structure setback from OHWL. Motion carried.

Public Hearing - White Tail Ridge Second Addition: Chair Lytle opened the public hearing. Bode introduced White Tail Ridge Second Addition for review. Bode stated staff's findings support approval of the major subdivision.

Jim Neuenschwander at 309 E Belle Vue Rd commented on the price of the townhomes and to ask if they could be rented. Reynolds answered that they were intended to be owner-occupied.

There were no further public comments. Motion by Omgvig and second by Davison to close the public hearing. Motion carried.

Members discussed the proposal. Motion by Omgvig and second by Porter to deny the proposed subdivision because lots would not conform to minimum width and area standards. Motion carried with Davison voting no.

Discussion: Members discussed the previous agenda items, adopting a DNR model ordinance, amending townhome standards, and removing annual CUP reviews from code.

Old Business: *None*

Adjournment: There were no additional agenda items. Chair Lytle adjourned the meeting at 7:20 p.m.

*Respectfully submitted,
Peter Bode*



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MEMORANDUM

TO: Planning Commission
FROM: Peter Bode, Planner & Zoning Official
DATE: December 2, 2022
RE: **CUP Application a for Boathouse at 420 Lake Aires Rd**

At its October 4 meeting, the Planning Commission recommended denial of a conditional use permit to place a boathouse at 420 Lake Aires Road. City Council denied the permit per Planning Commission's recommendation because the proposal would violate the 50-foot setback from the lake's ordinary high water level that applies to all structures.

The property owner believed the circumstance also represented a practical difficulty due to the unique layout of the land at the site. The land is relatively flat 30 feet from OHWL where the proposed structure would be placed, but becomes steeper as it reaches further from the lake. The Board of Zoning Appeals agreed that the circumstance represented a practical difficulty and granted a variance from the normal 50-foot OHWL requirement to place the structure 30 feet from the lake.

Given a variance has now been granted, the Planning Commission may recommend approval of the conditional use permit if it believes the proposal meets the intent of City Code as reviewed at October's meeting. The Board of Zoning Appeals attached the following conditions to the variance, and staff recommend Planning Commission approve the permit with the same conditions:

1. The boathouse must be screened from view of the lake by keeping adequate vegetation between the boathouse in place and maintained.
2. The boathouse must be painted a color which blends with the natural environment of the lake or land.
3. The boathouse must not be used for human habitation or be installed with water or sewer treatment infrastructure.

Respectfully submitted,
Peter Bode, Planner & Zoning Official

Attachments: Application for CUP
Report from October 4 Planning Commission Meeting

CITY OF FAIRMONT Planning & Zoning Application Form

NOTE TO APPLICANT: This is a comprehensive application form. Only those items related to your specific type of development are to be completed. All items applicable must be included prior to acceptance of the application.

Name of Applicant: Keith Kearney Address: 420 Lake Amy Rd Fairmont, MN Phone#: 612-327-7801

Street Address of Proposal: 420 Lake Amy Rd, Fairmont, MN 56031

Legal Description of Property: A. STAGE W. AMBER LAKE LOT 001 Block 001

see also 1986 pkt description.

Existing Use of Property: Residential

Proposed Use of Property: Residential

Type of Application	Fee	Submission Requirements (Attached)
<input type="checkbox"/> Appeal/Code Amendment	\$150.00	7
<input type="checkbox"/> Administrative Appeal	50.00	8
<input checked="" type="checkbox"/> Conditional Use Permit	150.00	4, 6(d-g)
<input type="checkbox"/> Home Occupation Permit	30.00	9
<input type="checkbox"/> Minor Plat	90.00	2(a), 5 (a-b)
<input type="checkbox"/> Planned Unit Development	150.00	1, 4, 6(d-g)
<input type="checkbox"/> Preliminary Plat	150.00	5 (b), 6
<input type="checkbox"/> Rezoning	150.00	1
<input type="checkbox"/> Variance	90.00	2,3

I HEREBY CERTIFY THAT THE INFORMATION AND EXHIBITS HERewith SUBMITTED ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Keith Kearney
Owner's Name(Printed)

Owner's Signature

Keith Kearney
Applicant's Name (Printed)

Applicant's Signature

City Staff Use Only

DATE FILED: _____

DATE FEE PAID: _____

MEETING DATE: _____

NOTICES SENT (DATE): _____

NOTIFICATION OF EXTENSION (LETTER SENT): _____

To: Peter Bode, Planning & Zoning
Fairmont Planning Commission

From: Keith Kearney *KKK*
420 Lake Aires Rd
Fairmont, MN 56031
(612) 327-7801

Subj: Conditional Use Application to Install Water Oriented Accessory Structure

Date: November 2, 2022

Dear Board-

At the regular meeting of the Board of Zoning Appeals on November 1, 2022, the Board granted our variance request with direction to proceed with a new conditional use permit (CUP) application allowing an accessory structure 30' from the Ordinary High-Water Level (OHWL) of the lake where 50' is normally required. Our request was found to meet the 3 factors of practical difficulty, Minnesota State DNR requirements, and staff findings to support granting the request. Furthermore, we agree to the following conditions as required by the Board of Zoning Appeals:

1. screen the structure from view of the lake by maintaining adequate vegetation
2. maintain a color which blends with the natural environment of the lake and land
3. structure shall not be used for human habitation or include water or sewer infrastructure

Please approval our new application to install a 8x20 storage container/structure to store our water accessories and avoid carrying our gear down and back up the hill. We live on a uniquely-shaped .75 acre city lot that includes both a corner and lakefront, located on the southernmost edge of Fairmont city limits (across the street from us is County). The proposed location is fairly flat, but setting it further back would require disturbing a hillside with steeper elevation. The proposed 30' offset will not disturb shoreline nor the hill and won't change lot permeability ratios as the container will be set on timbers. The proposed location is out of sight from the street, lake, and neighbors (over 90' to the nearest neighbor's property plus another 70' vacant parcel they have between our parcel and their home). It is also behind an established tree line, etc. Our one and only adjoining neighbor, Mike and Linda Katzenmeyer, have verbally approved of our request and will validate/confirm at your request.

We have chosen an attractive new navy-blue storage container that blends with the natural environment of the lake and land and is guaranteed waterproof and pest-proof. It will be placed on a wood base (not an impervious concrete pad), will cause no pollution, and will be delivered with minimal disruption. A storage container is also semi-permanent so could be easily removed if no longer needed.

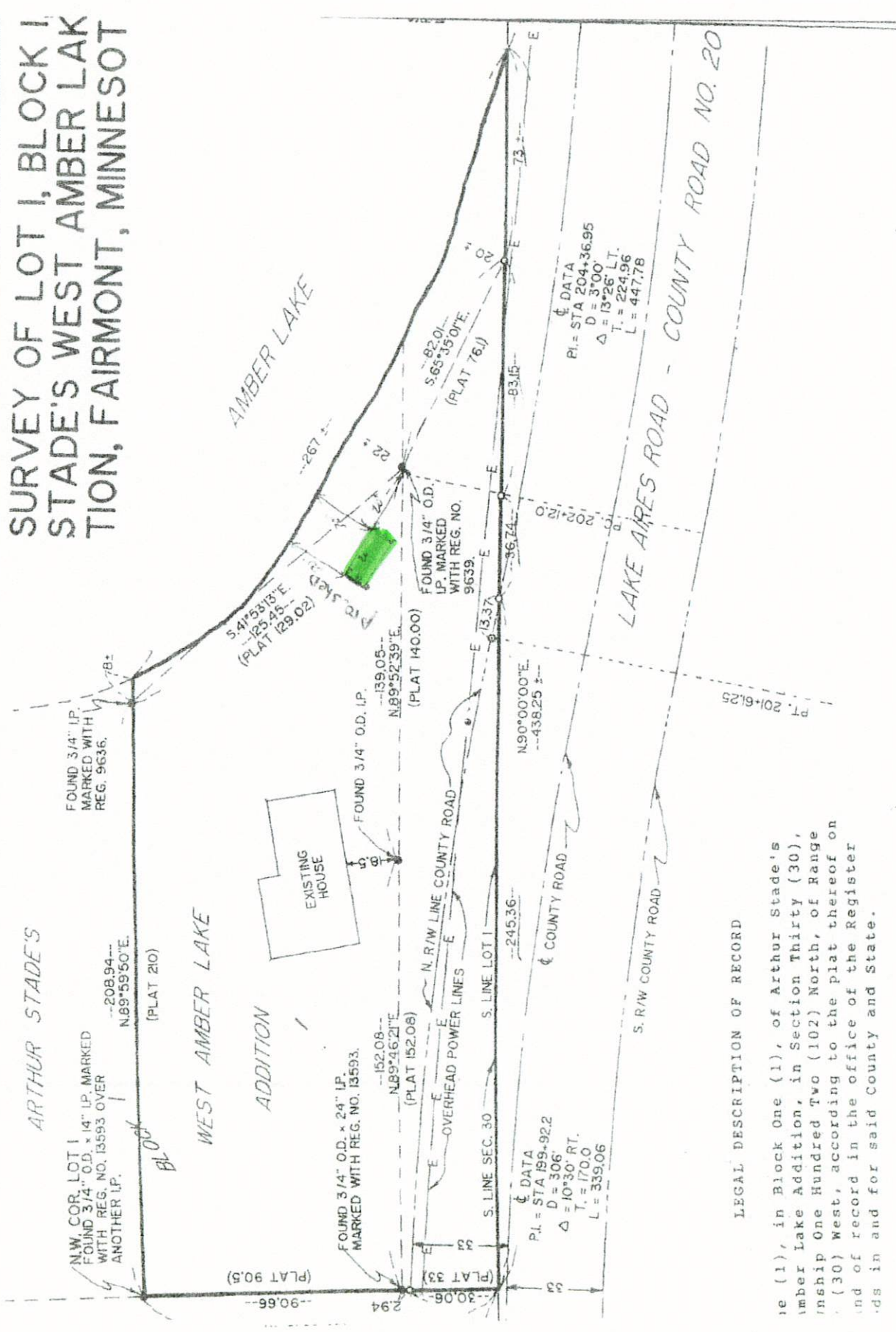
We take pride in our home and the city of Fairmont, are active in local civics, and have been responsibly updating & improving our home since purchase in September of 2020. Thank you for your consideration, we appreciate your support of this conditional use to improve our little corner of Fairmont. Thank you.

Sincerely,

Keith Kearney



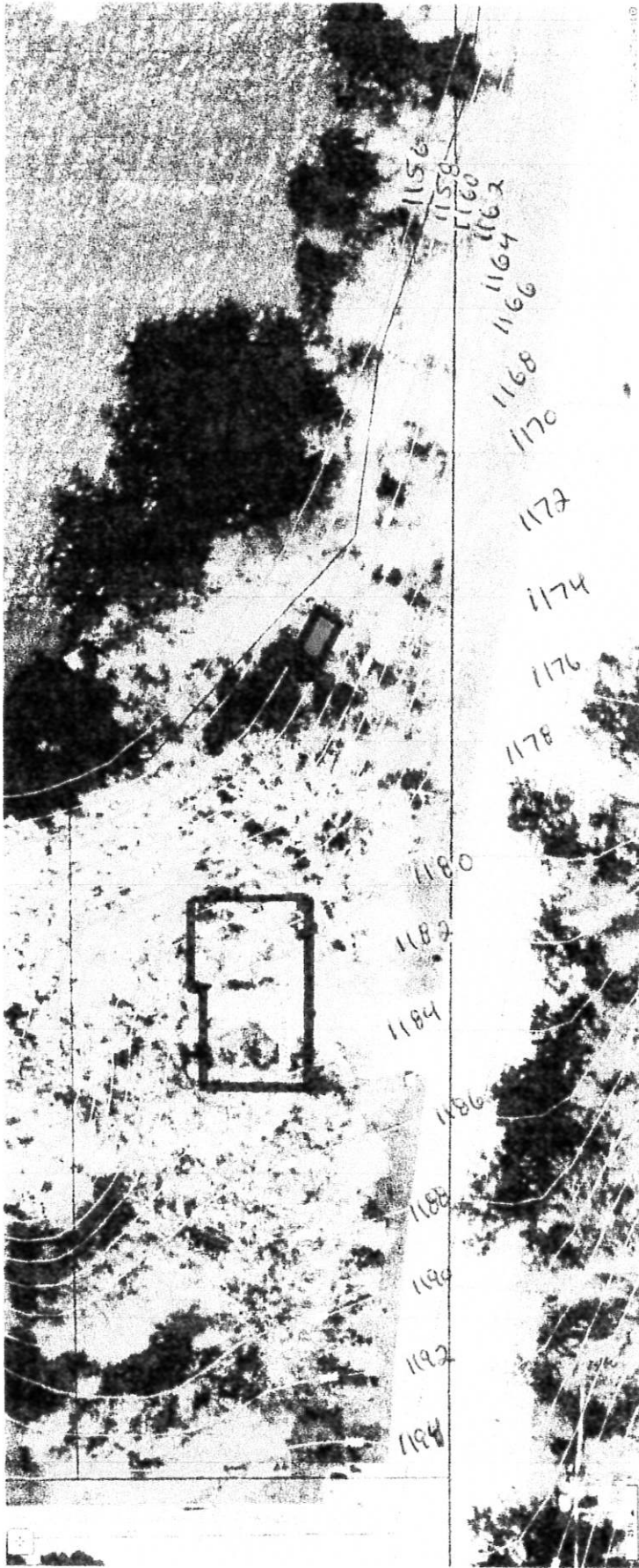
SURVEY OF LOT I, BLOCK I STADE'S WEST AMBER LAKE ADDITION, FAIRMONT, MINNESOTA



LEGAL DESCRIPTION OF RECORD

Block One (1), of Arthur Stade's West Amber Lake Addition, in Section Thirty (30), Township One Hundred Two (102) North, of Range (30) West, according to the plat thereof on file of record in the office of the Register of Deeds in and for said County and State.

420 Lake Aires Rd
Fairmont, MN



LEGAL DESCRIPTION OF RECORD

Lot One (1), in Block One (1), of Arthur Stade's West Amber Lake Addition, in Section Thirty (30), of Township One Hundred Two (102) North, of Range Thirty (30) West, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said County and State.





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MEMORANDUM

TO: Planning Commission
FROM: Peter Bode, Planner & Zoning Official
DATE: October 4, 2022
RE: **CUP Applications for Boathouses at 221 Krahmer Dr & 420 Lake Aires Rd**

The property owners at 221 Krahmer Drive and 420 Lake Aires Road in Fairmont have applied for Conditional Use Permits to build new boathouses. While many of these boathouses exist close to the lake shore of residential properties in Fairmont, the City has not received any new requests for boathouses in at least six years. The dimensions, distances from the Ordinary High Water Level (OHWL) of the lake, and elevations have been shown on the applicants' site plans.

Fairmont's Shoreland Management code defines boathouses as: "an accessory structure primarily used for storage of boating and marine equipment. Boathouses shall not be used for permanent habitation or contain sanitary facilities not connected to the municipal sewer and water system".

Importantly, the code goes on to require a 50-foot setback from OHWL (as well as 30 feet from the top of a bluff) for all structures without providing an explicit exception for boathouses.

The Shoreland Management code considers boathouses as conditional uses in the shoreland overlay district. The Planning Commission may attach conditions to the permit in order to protect the lake, shoreline, and nearby vegetation. Code suggests the following conditions, but does not limit additional conditions be added:

1. Increased setback from OHWL.
2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
3. Special provisions for the location design, use of structures, treatment systems, water launches, docks, and parking areas.

In their attached letter, Minnesota Department of Natural Resources (DNR) notes that what Fairmont considers "boathouses" and what the property owners have applied for do not meet the definition of "boathouses" by state rule, which are generally prohibited as they would be located below OHWL for the purposes of launching craft. Instead, DNR considers the two proposals to be "water oriented accessory structures" by state rule definitions. By this state definition, the structures must be set back 10 feet from the OHWL and be no larger than 250 square feet.



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If the proposed structures are to be considered water oriented accessory structures, DNR suggests the following conditions:

4. The structure may not be used for human habitation. Water supply and sewer treatment may not be installed.
5. The structure must be screened from the view of public waters and adjacent shoreland with native trees and shrubs.

As a result of the mismatching definitions in state statute and city code, the Planning Commission is presented with a two options. First, the Commission may recognize that the proposed structures meet both the definition of “boathouse” by city code and “water oriented accessory structure” by state rules and grant the CUP with conditions.

Second, the Commission may deny the applications because the proposed structures would to be located closer than 50 feet from OHWL, or for any other appropriate reasons.

*Respectfully submitted,
Peter Bode, Planner & Zoning Official*

Attachments: Shoreland Management Code (with highlights)

Minnesota Department of Natural Resources
Southern Region
21371 State Hwy 15
New Ulm, MN 56073
507-359-6000

Todd Piepho MN DNR Area Hydrologist
50507 Sakatah Lake State Park Rd.
Waterville, Mn 56096

9/29/2022

Peter Bode
Planner and Zoning Official City of Fairmont

Re: Lund/Kearney CUP applications

Good Morning Peter:

Thank you for sharing the CUP applications for the Lund and Kearney sites. It is understood that Fairmont considers these proposed structures boathouses, per local ordinance and requires a CUP for such proposals. MN Rule 6120 Shoreland and Floodplain Management has a slightly different definition of boathouse as defined below;

Boathouse- a structure designed and used solely for the storage of boats or boating equipment.

The applications for the Lund and Kearney sites appear to be a water oriented accessory structure, per MN Rule 6120, definition below-assuming they intend to store more than just boats or boating equipment;

Water Oriented Accessory Structure or facility- a small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

With that said, my comments on the applications are as follows;

1. These structures cannot be designed for human habitation-no water supply or sewage treatment can be installed. Both of these applications do not mention any intent of this, I believe they should be good there. I bring this up as an option to add conditions or language to the CUP if approved that do not allow this to take place in the future after approval of the CUP.
2. The structure should be screened from the view of the public waters and adjacent shorlands. Planting of native trees/shrubs is generally a recommendation I make as a condition of the permit approval through the local LGU for screening.

3. Water oriented accessory structures need to be a minimum of 10' from the OHWL. It appears both of these structures will meet that setback.
4. Size limit for water oriented accessory structures is 250' square feet, bot applications appear to meet this requirmenet.

If you have any additional questions please feel free to email or call.

Sincerely,



Todd Piepho
MN DNR Area Hydrologist

cc:

Todd Kolander-Southern District Manager
Dan Girolamo-Area Hydrologist



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MEMORANDUM

TO: Planning Commission
FROM: Peter Bode, Planner & Zoning Official
DATE: December 2, 2022
RE: **Water-oriented Accessory Structures Amendment**

After receiving Planning Commission’s recommendation, City Council denied two conditional use permits for boathouses at its October 24 meeting because they would both violate the shoreland management ordinance’s 50-foot setback from ordinary high water level that applies to all structures. Council also instructed staff to prepare an amendment to City Code clarifying structures used to store watercraft and watercraft equipment and their setbacks.

Staff prepared the attached amendment to do the following:

1. Delete “boathouse” as a definition and a conditional use of the shoreland management district. Our local use of the term “boathouse” conflicts with state rule and DNR’s model ordinance.
2. Add “water-oriented accessory structure” as a definition and conditional use of the shoreland management district. This intends to allow one of these structures per lot between 10 and 50 feet from OHWL, no larger than 250 square feet in size, in which a property owner may store watercraft or watercraft equipment.
3. Clarify that water-oriented accessory structures may be placed between 10 and 50 feet from the ordinary high water level, and that accessory structures farther than 50 feet from the ordinary high water level are not water-oriented accessory structures and therefore do not need a conditional use permit.

Minnesota DNR, which has the authority to approve or deny amendments to local shoreland management ordinances, has given conditional approval of the amendment. Final approval can be granted after the amendment is adopted by City Council.

Respectfully submitted,
Peter Bode, Planner & Zoning Official

Attachments: Proposed Ordinance 2022-14
DNR Conditional Approval

OFFICIAL PUBLICATION

NOTICE OF HEARING

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the City Council of the City of Fairmont will hold a public hearing to consider proposed Ordinance No. 2022-14:

ORDINANCE 2022-14

**STATE OF MINNESOTA
COUNTY OF MARTIN
CITY OF FAIRMONT**

AN ORDINANCE AMENDING CHAPTER 26 OF THE CITY CODE REGARDING WATER-ORIENTED ACCESSORY STRUCTURES

WHEREAS, the Fairmont City Code regulates the use and location of Boathouses within the city limits; and,

WHEREAS, the Fairmont City Council desires to amend the definition of structures used primarily for storage of boating and marine equipment.

NOW THEREFORE, the City Council of the City of Fairmont does ordain:

- 1. *Section 26-1. Definitions of the Fairmont City Code shall be amended as follows (deletions are ~~stricken~~, additions are underlined):***

Sec. 26-1. Definitions.

The following terms, as used in this chapter, shall have the meanings stated:

Abutting or *abuts* means areas or lots whose boundaries at least touch one (1) another at a single point, including areas or lots whose boundaries would touch but for an intervening public right-of-way including streets and alleys.

Accessory structure or use means a subordinate structure or use located on the same lot on which the principal building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use. On waterfront lots accessory structures shall include ~~boathouses~~ water-oriented accessory structures, decks, permanent boat lifts and stairways.

Agricultural means an area in excess of five (5) contiguous acres used for the production of farm crops customary on open tracts of land and the accessory raising of livestock and poultry. The term shall also include incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of customers vehicles shall be furnished off the public right-of-way. The term does not include commercial feedlots or the commercial feeding of garbage to swine or other animals.

Airport means the municipal airport.

Alley means a public right-of-way twenty (20) feet or less in width, affording a secondary means of access to abutting property.

Apartment means a part of a building consisting of a room or suite of rooms which is used for a semi-permanent residence for one (1) family or an individual, and is equipped with cooking facilities, other than a boardinghouse, hotel or motel.

Automobile repair—major means the general repair, rebuilding or reconditioning of engines, motor vehicles or trailers, including body work, framework, welding and major painting service.

Automobile repair—minor means the replacement of any part or repair of any part which does not require the removal of the engine head or pan, engine, transmission or differential; incidental body and fender work, minor painting and upholstering service when said service above stated is applied to passenger automobiles, and trucks not in excess of seven thousand (7,000) pounds gross vehicle weight.

Automobile wrecking and junkyard means land or buildings where waste, discarded or salvaged materials are bought, kept, sold, stored, exchanged, packed, disassembled, or handled, including, but not limited to, scrap metal, rags, paper, hides, rubber products and products resulting from the wrecking of automobiles, other vehicles, or machinery.

Basement means a portion of a building located partly underground but having half or more of its floor-to-ceiling height below the average grade of the adjoining ground.

Bed and breakfast inn means an owner-or manager-occupied business other than a boardinghouse, hotel or motel, in which a room or rooms are rented on a nightly basis and in which only breakfast is included as part of the basic compensation, and where the rooms are single, habitable units used or intended to be used for living and sleeping, but not for cooking and eating purposes.

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 eighteen (18) percent over a distance for fifty (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 twenty-five (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 twenty-five (25) feet or more above the ordinary high water level averages thirty (30) percent or greater; and
- (4) The slope shall drain toward the waterbody.

Bluff impact zone means a bluff and land located within twenty (20) feet from the top of a bluff.

Boardinghouse means a building other than a hotel containing at least one (1) dwelling unit, where for compensation and by prearrangement for definite periods lodging, or lodging and meals, are provided for one (1) to eight (8) persons not members of the principal family therein.

~~*Boathouse* means an accessory structure primarily used for storage of boating and marine equipment. Boathouses shall not be used for permanent habitation or contain sanitary facilities not connected to the municipal sewer and water system.~~

Building means any structure having a roof which may provide shelter or enclosure of persons, animals or chattel. When a structure is divided by area separation walls without openings, each portion of such building so separated shall be deemed a separate building.

Building height means the vertical distance from the average elevation of the finished lot grade at the front of the building to the highest point of the coping of a flat roof, or the deck line of a mansard roof or to the highest point of a gable, hip or gambrel roof.

Building line means the line beyond which no structure may project.

Bulk materials means uncontained solid matter such as powder, grain, stone, sand, sulphur, etc., that would become airborne if not covered.

Business means any occupation, employment or enterprise wherein merchandise is exhibited or sold, or which occupies time, attention, labor and materials, or where services are offered for compensation.

Clear-cutting means removal of an entire stand of trees or shrubs on waterfront lots.

Commercial animal raising or kennel means any premises where three (3) or more animals at any one (1) time, over six (6) months of age are owned, boarded and bred or offered for sale.

Commercial feedlot means any facility consisting of barns, confinement buildings, corrals, or fenced areas of any kind, for the purpose of breeding or feeding domestic livestock for the sole purpose of retail or wholesale sale. Commercial operation is that use that can be determined to be beyond what is for personal consumption.

Commercial planned unit developments, in shoreland means uses that provide transient, short-term lodging spaces, rooms, or parcels and where the operations are essentially service oriented. For example, hotel/motel accommodations, resorts, recreational vehicle and camping parks, retail, offices and other primarily service-oriented uses as defined in Minnesota Statutes, chapter 394.

Comprehensive plan means a compilation of material, statements, goals, standards and maps adopted by the planning commission and used by the commission in making recommendations for guiding the orderly development of the private and public sectors of the city.

Conditional use means those occupations, vocations, skills, arts, businesses, professions, or uses specifically designated in each zoning use district, which for their respective conduct, exercise or performance in such designated use districts may require reasonable but special, peculiar, unusual or extraordinary limitations, facilities, plans, structures, thoroughfares, conditions, modifications, or regulations in such use district for the promotion or preservation of the general public welfare, health, convenience, or safety therein and in the city and therefore may be permitted in such use district only by a conditional use permit.

Condominium means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interest in the common elements are vested in the unit owners.

Curb level means the mean level of the curb where it is not already in place.

Daycare, home means a family dwelling in which foster care, supervision and training for children of school or preschool age out of their home is provided during part of a day (less than twenty-four (24) hours) with no overnight accommodations or facilities and children are delivered and removed daily. The number to be cared for in one (1) daycare home shall not exceed ten (10) including the family's own children.

Daycare, group nursery means a service provided to the public, in which six (6) or more children of school or preschool age are cared for during established business hours. No overnight facilities are provided. The children are delivered and removed daily.

Deck in shoreland means a horizontal, enclosed 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 (3) feet above ground.

Duplex, triplex, and quad means a dwelling structure on a single lot, having two (2), three (3), and four (4) units respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

Dwelling means that part of a building intended to be occupied for residential purposes, but not including rooms in motels, hotels, nursing homes, boarding houses, trailers, cabins or mobile homes.

Dwelling, attached means a dwelling which is joined to another dwelling at one (1) or more abutting walls.

Dwelling, detached means a single dwelling having a yard on all sides.

Dwelling, multiple means a structure or portion thereof intended and designed for three (3) or more dwellings.

Dwelling, townhouse means a single structure consisting of three (3) or more dwelling units on individual lots having one (1) or more walls abutting with another dwelling and designed to have all exits open directly to the outside.

Dwelling, twin home means two (2) single-family attached dwellings located on individual lots in such a manner that a common party wall is located on the common side lot line.

Dwelling, two-family means a dwelling on a single lot, designed or intended exclusively for occupancy by two (2) families living independently of each other, commonly referred to as a duplex.

Dwelling, zero lot line means two (2) to four (4) single-family dwellings attached by party walls in such a manner that the common party wall(s) are located on the common side or rear lot line(s). This definition includes but is not limited to such common references as twin homes.

Dwelling site means a designated location for residential use by one (1) or more persons using temporary or movable shelter, including camping and recreational vehicle site in the shoreland.

Dwelling unit means any structure or portion of a structure, or other shelter designed as short-or long-term living quarters for one (1) or more persons, including rental or timeshare accommodations such as motel, hotel, and resort rooms and cabins in the shoreland.

Essential services means the erection, construction, alteration, or maintenance of underground or overhead gas, electrical, steam, or water transmission and distribution systems, collection, communication, supply or disposal systems by public utilities, municipal or other governmental agencies.

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.

Family means one (1) or more persons each related by blood, marriage, or adoption, or group of not more than four (4) persons not so related maintaining a common household and using common cooking and kitchen facilities.

Fence means any partition, structure, wall or gate erected as a dividing marker, barrier or enclosure.

Floor area means the sum of the gross horizontal area of several floors of the building, measured from the exterior faces of the exterior walls.

Floor area, habitable means the same as floor area except that its application is limited to dwellings. It is measured from the interior faces of the interior walls, and excludes all unused cellars, garages, porches, attics, stairways, unimproved basements, storage, utility, heating rooms and similar areas.

Floor area ratio (FAR) means the floor area of the building or buildings on that zoning lot divided by the area of such zoning lot, or, in the case of planned developments-group projects by gross site area.

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.

Garage, private means an accessory building or accessory portion of the principal building which is intended for use to store the private passenger vehicles of the family or families resident upon the premises, and in which no business, service or industry is carried on.

Hardship means the property in question cannot be put to reasonable use under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to his property, not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under terms of the official controls.

Home occupation means an accessory use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods and services as regulated by this chapter.

Hotel means a building having provision for nine (9) or more guests in which lodging is provided with or without meals for compensation and which is open to transient or permanent guests or both, and where no provision is made for cooking in any guest room, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge.

Housepet means a dog, cat or any animal of a type customarily used for a pet by an individual family.

Intensive vegetation clearing means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

Large domestic animal means horses, swine, cattle, llamas, camels, buffalo or other like animals.

Livestock means any domestic animal except a house pet—horses, swine, cattle, llamas, camels, buffalo, sheep, goats, rabbits, poultry or other like animals over one (1) year of age.

Lot means land occupied or to be occupied by a building and its accessory buildings together with such open spaces as are required under this chapter and having its principal frontage upon a public street or officially approved access.

Lot area means the area of lot in a horizontal plan bounded by the lot lines.

Lot corner means a lot situated at the junction of and abutting on two (2) or more intersecting streets, or a lot at the point of deflection in alignment of a continuous street, the interior angle of which does not exceed one hundred and thirty-five (135) degrees.

Lot line means the property line bounding a lot except that where any portion of a lot extends into the street right-of-way or a proposed street right-of-way, the line of such street right-of-way shall be the lot line for applying this chapter.

Lot line, front means that boundary of a lot which abuts an existing or dedicated private or public street, and in case of a corner lot it shall be the shortest dimension on a street except that a corner lot in a nonresidential area, shall be deemed to have frontage on both streets.

Lot line, rear means that boundary of a lot which is opposite the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten (10) feet in length within the lot, parallel to, and at the maximum distance from the front lot line. In the case of a corner lot in a nonresidential area, such line shall be parallel to the front line facing the existing or proposed main entrance.

Lot of record means a platted lot or metes and bounds parcel which has been recorded in the office of the register of deeds prior to June 30, 1986.

Lot, through means a lot which has a pair of opposite lot lines abutting two (2) substantially parallel streets, and which is not a corner lot. On a through lot, both street lines shall be front lot lines for applying this chapter.

Lot, width means the horizontal distance between the side lot lines of a lot measured parallel to the front lines of the lot at the front building setback line.

Manufactured home, single family means a manufactured, transportable, single-family dwelling unit, suitable for year-round occupancy and containing water supply, waste disposal and electrical conveniences designed for attachment to outside systems. A manufactured home is designed so that it is or may be mounted on wheels and used as a conveyance on highways and streets.

Manufactured home park means a contiguous parcel of land which has been developed and is licensed for the placement of mobile homes.

Mini-storage or self-storage means a building or group of buildings in a controlled access or fenced area that contains varying sizes of individual compartmentalized units, which are accessed by separate exterior doorways for each unit, designed for the storage of property for individuals, organizations and businesses. These are also known as self-storage facilities or mini-warehouse facilities.

Motel means a building or group of detached, semi-detached, or attached buildings containing guest rooms or dwellings, each of which has a separate outside entrance leading directly from the outside of the building, with garage or parking space conveniently located to each unit, and which is designed, used or intended to be used primarily for the accommodation of transient guests traveling by automobile.

Motor fuel station means a retail place of business engaged primarily in the sale of motor fuels, but also may be engaged in supplying goods and services generally required in the operation and maintenance of motor vehicles. These may include sale of petroleum products, sale and servicing of tires, batteries, automotive accessories and replacement items, washing and lubrication services, and the performance of minor automotive maintenance and repair.

Nonconforming building, structure or use means a building, structure or use which does not conform with the district regulations in which it is situated.

Open sales lot means land devoted to the display of goods for sale, rent, lease or trade where such goods are not enclosed within a building.

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.

Parking space means an area, enclosed in a main building, in an accessory building, or unenclosed, sufficient in size to store one (1) standard automobile, which has adequate access to a public street or alley and permitting satisfactory ingress or egress of an automobile.

Planned development in shoreland 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 usually involving clustering of these units of 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, the 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.

Planned unit development means the improvement of any sized parcel of land on which two (2) or more principal buildings and supporting structures are possible and permitted according to a development plan agreed upon by the city and developer according to conditions set forth in this chapter.

Public open space means any publicly owned open area, including but not limited to the following: parks, playgrounds, school sites, parkways and streets.

Public waters means any waters as defined in Minnesota Statutes, section 105.37, subdivisions 14 and 15. However, no lake, pond or flowage of less than ten (10) acres in size in municipalities and twenty-five (25) acres in size in unincorporated areas need be regulated for the purposes of Minnesota Rules parts 6120.2500 to

6120.3900. A body of water created by a private user where there was no previous shoreland may, at the discretion of the local government, be exempted from Minnesota Rules parts 6120.2500 to 6120.3900.

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.

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.

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.

Setback means the minimum horizontal distance between a structure, sewage treatment system, road, highway, property line, or other facility, from an ordinary high water level of the top of a bluff.

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 MPCA Rules Chapter 7080.

Sewer system means pipelines or conduits, pumping stations, and force main, and all other constructions, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

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 fifty (50) percent of the structure setback.

Shoreland means land located within the following distance from public waters:

- (1) One thousand (1,000) feet from the ordinary high water level of a lake, pond, or flowage; and
- (2) Three hundred (300) feet from a river or stream, or the landward extent of a flood plain designated by ordinance on a river or stream, whichever is greater.

The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the Minnesota Commissioner of Natural Resources.

Sign means any outdoor structure either stationary or movable containing any writing, announcements, declaration, demonstration, display, illustration, insignia or illumination used to advertise or promote the distribution of any merchandise or the sale of property or service of any person.

Sign, advertising means a sign which directs attention to a business, commodity, service, or entertainment not exclusively related to the premises where such sign is located.

Sign, business means a sign which directs attention to a business or profession conducted or to a commodity, service or entertainment sold or offered on the premises on which such sign is located.

Significant historic site means any archeological 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 archeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

Solar collector means any device or structure, or combination thereof, that collects solar radiation and converts it to chemical, electrical, mechanical and thermal energy.

Solar energy means radiant energy (direct, defuse, and reflected) received from the sun.

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 these regulations. Where specific information is not available, steep slopes are lands having average slopes over twelve (12) percent, as measured over horizontal distances of fifty (50) feet or more, that are not bluffs.

Story means that portion of a building included between the surface of any floor and the surface of the floor next above it; or if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story.

Street means a dedicated private or public right-of-way not less than fifty (50) feet in width which affords a primary means of access to abutting property, and shall also include avenue, highway, or road, excepting existing public right-of-way of lesser width.

Structure means anything constructed or erected on, or connected to the ground.

Subdivision means land that is divided for the purpose of sale, rent, or lease, including planned unit development.

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 business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

Toe of the bluff means the point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from gentler to steeper slope above. If no break in the slope is apparent, the toe of bluff shall be determined to be the lower end of a fifty-foot segment, measured on the ground, with an average slope exceeding eighteen (18) percent.

Top of the bluff means the point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from steeper to gentler slope above. If no break in the slope is apparent, the top of bluff shall be determined to be the upper end of a fifty-foot segment, measured on the ground, with an average slope exceeding eighteen (18) percent.

Use means the purpose or activity for which the land or building thereon is designated, arranged or intended, or for which it is occupied, utilized or maintained, and shall include the performance of such activity or defined by the performance standards in this chapter.

Use, accessory means a use subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.

Use, principal means the main use of land or buildings as distinguished from subordinate or accessory uses. A principal use may be either permitted or conditional.

Use, substandard means any use of shorelands existing prior to June 30, 1986 which is permitted within the applicable zoning district but does not meet the minimum lot area and length or water frontage, structural setbacks, or other dimensional standards of the shoreland management district.

Variance means a modification or variation from provisions of this chapter applying to a particular parcel of property because of undue hardship due to circumstances peculiar and unique to the parcel. Variances shall be limited to height, bulk, density and yard requirements.

Waterfront lots means unplatted land or platted lots whose property line abuts a DNR designated lake or stream.

Water-oriented accessory structure means a watercraft and watercraft equipment storage structure, which, because of the relationship of its use to public water, is located closer to the public water than the normal structure setback. Boathouses given the meaning under [Minnesota Statutes, Section 103G.245](#) are not water-oriented accessory structures. Any structure which complies with the normal structure setback from the public water is not a water-oriented accessory structure.

Wetland means a surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition), which is hereby incorporated by reference, is available through the Minitex interlibrary loan system, and is not subject to frequent change.

Wind energy conversion system (WECS) means any device that converts wind power to useable energy, such as electricity or heat. Such devices include: wind charges, windmills, and wind turbines.

Yard means an open space on a lot which is unoccupied and unobstructed from its lowest level to the sky. A yard extends along a lot line at right angles to such lot line to a depth or width specified in the yard regulations for the zoning district in which such lot is located.

Yard, corner means a yard extending along a street right-of-way which is not a front yard.

Yard, front means a yard extending along the full width of the front lot line between side lot lines and extending from the abutting front street right-of-way line to a depth required in the yard regulations for the district in which such lot is located.

Yard, rear means a yard extending along the full width of the rear lot line between the side lot lines and extending toward the front lot line for a depth as specified in the yard regulations for the district in which such lot is located.

Yard, side means a yard extending along the side lot line between the front and rear yards, having a width as specified in the yard regulations for the district in which such lot is located.

Zoning district means an area or areas within the limits of the zoning jurisdiction for which the regulations and requirements governing use are uniform.

(Ord. No. 86-4, § 7.02, 6-30-86; Ord. No. 89-13, § I, 9-25-89; Ord. No. 92-13, 12-14-92; Ord. No. 96-7, 9-23-96; Ord. No. 2016-06, 10-24-16; Ord. No. 2017-07, 7-31-17; Ord. No. 2018-14, 6-25-18)

2. *Section 26-503. Shoreland overlay district (SOD) shall be amended as follows (deletions are ~~stricken~~, additions are underlined):*

Sec. 26-503. Shoreland overlay district (SOD).

- (a) The shorelands of the city are designated as the shoreland overlay district. The purpose of the shoreland overlay district is to provide for the wise utilization of shoreland areas in order to preserve the quality and natural character of these protected waters of the city.
- (b) Permitted uses in the district are all permitted uses allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.
- (c) Conditional uses in the district are as follows:
 - (1) All conditional uses and applicable attached conditions allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.
 - ~~(2) Boathouses.~~
 - (2) One water-oriented accessory structure per lot provided it complies with the following provisions:
 - a. The structure must not exceed ten feet in height and cannot occupy an area greater than 250 square feet.
 - b. The structure or facility is not in the Bluff Impact Zone;
 - c. The setback of the structure or facility from the ordinary high water level must be at least ten feet;
 - d. The structure is not a boathouse as defined under [Minnesota Statutes, Section 103G.245](#);

e. The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;

f. The structure must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities;

g. Water-oriented accessory structures may have the lowest floor placed lower than the elevation specified in Sec. 26-519 if the structure is designed to accommodate internal flooding, constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

- (d) Any uses of shorelands in existence prior to June 30, 1984, which are permitted within the applicable underlying zoning district, but do not meet the minimum lot area, setbacks, or other dimensional requirements of this division are substandard uses. Substandard uses other than uses regulated in subsection (e) shall be allowed to continue. However, any structural alteration or addition to a substandard use on waterfront lots that will increase the substandard dimensions shall not be allowed.
- (e) Prohibited uses are in the district. Any uses which are not permitted or conditional uses as regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.

(Ord. No. 86-4, § 7.11(II)(B)(2), 6-30-86)

3. Section 26-516. Lots and setbacks shall be amended as follows (deletions are ~~stricken~~, additions are underlined):

Sec. 26-516. Lots and setbacks.

In order to reduce the effects of overcrowding, to prevent pollution of waters of the state, to maintain property values and to maintain natural characteristics of shorelands and adjacent water areas, the following standards shall be applied to all shorelands of the protected waters within the city as listed in Division 1 of this article:

- (1) Lot area:

Minimum Lot Area for Sewered Lots (square feet)

	Waterfront Lots	Other Lots
Single	15,000	10,000
Duplex	26,000	17,500
Triplex	38,000	25,000
Quad	49,000	32,500

Minimum Lot Area for Nonsewered Lots (square feet)

	Waterfront Lots	Other Lots
Single	20,000	40,000
Duplex	40,000	80,500
Triplex	60,000	120,000
Quad	80,000	160,000

(2) Water frontage and lot width:

Minimum Water Frontage and Lot Width for Sewered Lots

	Waterfront Lots	Other Lots
Single	85	85
Duplex	135	135
Triplex	195	190
Quad	255	245

Minimum Water Frontage and Lot Width for Nonsewered Lots

	Waterfront Lots	Other Lots
Single	100	150
Duplex	180	265
Triplex	260	375
Quad	340	490

(3) Structure setback, except for water-oriented accessory structures as provided in Sec. 26-503, from ordinary high water mark:

- a. For sewered lots: fifty (50) feet.
- b. For unsewered lots: one hundred (100) feet.

(4) Structure setbacks from road:

- a. Highways (federal, state & county), fifty (50) feet.
- b. Municipal roads, thirty (30) feet.

(5) Structure setback from top of bluff, thirty (30) feet, and no structures except stairways, lifts and landings are allowed in bluff impact zone.

(6) Structure setback from unplatted cemeteries, fifty (50) feet.

(7) Sewage systems from ordinary high water level, seventy-five (75) feet.

(8) Where the requirements of the underlying zoning district as shown on the official map are more restrictive the more restrictive standards shall apply.

(Ord. No. 92-13, 12-14-92)

You are further notified said hearing will be held in the **City Council Chambers of City Hall, 100 Downtown Plaza, Fairmont, Minnesota** on Monday, December 12, 2022, at 6:00 p.m.

BY ORDER OF THE CITY OF FAIRMONT

s/s Patricia J. Monsen,
Patricia J. Monsen, City Clerk



South Region Headquarters
21371 State Highway 15
New Ulm, MN 56073

November 23, 2022

Peter Bode
Planning and Zoning Official
100 Main Street
Fairmont, MN 56031

Re: 2022 Conditional Approval of City of Fairmont's Shoreland Ordinance Amendment

Dear Mr. Bode:

Thank you for sending your proposed shoreland ordinance amendment to the DNR for conditional approval review. I am pleased to inform you that the proposed amendment is substantially compliant with the statewide rules and hereby approved, provided the conditions of approval in this letter are met.

Ordinance Evaluation

We have reviewed the following sections that you propose to amend in your draft ordinance received on November 14, 2022 for compliance with state shoreland rules (MR 6120.2500 – 6120.3900). Our conditional approval only applies to the specific ordinance sections listed below.

1.) Chapter 26 – Definitions- The definition for water oriented accessory structure includes structures used for “water craft storage”. This is open for interpretation because condition “d” in 503C says a water oriented accessory structure is not a boat house or a boat storage structure. An additional definition for watercraft may be helpful and could include recreational products such as self-propelled paddle boats, canoes, kayaks and jet skis.

2.) Chapter 26 503C adds conditions for Water Oriented Accessory Structures. The listed conditions mirror those in the state’s model shoreland ordinance.

Conditions of Approval

The following conditions must be met before the DNR will issue final approval:

1.) Complete and mail the attached checklist, with proof of adoption of the ordinance amendments by the City Council, to DNR.

Revised 10/05/2022

Next Steps

Following are the steps for completing and receiving final DNR approval for your amendment:

1. The city council adopts the amendment.
2. Email the completed Ordinance Processing Checklist (attached) and the documents identified on the checklist within 10 days of city council adoption to:
 - a. Dan Girolamo – dan.girolamo@state.mn.us
 - b. Ordinance.review.dnr@state.mn.us

We will review the amendment adopted by the city council for consistency with the above conditions. I will send you a “final approval” letter when the requested documentation is submitted to DNR and accepted as complete.

A shoreland ordinance is an important land use regulation that helps to protect surface water quality, near shore habitat, and shoreland aesthetics of Minnesota’s public waters. We appreciate your efforts to protect these resources for all present and future Minnesotans. Dan Girolamo is available to assist with ordinance technical guidance and to consult with you on other land and water-related projects. Please note that State rules require DNR final approval of shoreland ordinances and amendments for those ordinances to be effective.

Sincerely,



Todd Kolander
South District Manager

Attachments:

Proposed Ordinance amendments with DNR comments
Ordinance Processing Checklist

c: Dan Girolamo, DNR Area Hydrologist
Ordinance.review.dnr@state.mn.us

Revised 10/05/2022