

## 2008 Minnesota Land Use Legislative Update

### *New Legislation Affecting You as a Planner*

Following are highlights of statutory changes adopted by the 2008 Minnesota Legislature related to land use.

**Aggregate resources:** Owners of property at least 10 acres in size with aggregate resources can now apply to have their property assessed at its current use rather than highest or best use. This change is intended to encourage property owners to wait to develop property until after aggregate resources have been extracted. A covenant must be placed on the property restricting the future use of the land to its current use until aggregate is extracted or the covenant is cancelled. Counties may opt-out of the program within the next two years. 2008 Session Law Chapter 366, Article 6, amending Minnesota Statutes 2006, sections 273.1115.

**Agricultural and Open Space Preservation Task Force:** An agricultural and open space preservation task force was created to study state and local policies and incentives related to encouraging farms, privately owned forest lands, and other privately owned open spaces to be preserved. The task force includes legislators, state agencies, and representatives from agricultural groups and city, township, and county associations. The task force must report findings by January 30, 2009. 2008 Session Law Chapter 297, Section 66.

**Agricultural land classification/Green Acres:** Under the Green Acres law, property taxes for land used for agriculture are based upon an agricultural value rather than a fair market value. Green Acres helps prevent premature land conversion due to high property taxes. The new legislation clarifies which lands are eligible for agricultural use valuation and Green Acres. Rural vacant land and land enrolled in conservation programs such as CRP, RIM, and CREP are not eligible. Rural vacant land is defined as non-agricultural land that may be adjacent to agricultural land. Land currently enrolled in Green Acres that fits the definition of rural vacant land is grandfathered until transferred or sold. The definition of agricultural land was broadened to include properties of 10 acres or smaller if used exclusively for intensely for farming. The changes have implications for agricultural land preservation. 2008 Session Law Chapter 366, Article 6, amending Minnesota Statutes 2006, sections 273.111 and 273.13.

**Comprehensive planning in rural areas:** The "President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land" finally passed this session after several previous attempts. The legislation creates guidelines that must be considered by counties outside of the metropolitan area that undertake comprehensive planning. Natural heritage data from the county biological survey, when available, must be considered in comprehensive planning, and consideration shall be given to the preservation of agricultural, forest, wildlife, and open space land, and minimizing development in sensitive shoreland areas. Counties must also consider identifying areas with urban services for higher density and encouraging full build-out of these areas prior to conversion of agricultural and open space lands. Within 3 years of adopting such goals and objectives in a comprehensive plan, counties shall consider ordinances implementing the goals and objectives. Similarly, the legislation also states that cities and townships outside the metropolitan area shall consider restricting residential, commercial, and industrial development to areas with urban services and that minimize fragmentation and development of agricultural and open space lands. Counties with

80% or more of pre-settlement wetlands are exempted from the legislation. 2008 Session Law Chapter 297, Sections 56-62, amending Minnesota Statutes 2006, sections 394.231 and 462.357.

**Eminent domain:** Authorities, including federally funded transportation projects, acquiring land through the power of eminent domain must reimburse nonresidential businesses up to \$50,000 for eligible relocation reestablishment costs regardless of whether the costs were actually incurred. Previously federally funded projects were not covered under this provision. The effective date is retroactive to January 16, 2007. 2008 Session Law Chapter 312 amending Minnesota Statutes 2006, section 117.51.

**Interim uses/Public hearing:** The county planning and zoning statute (Chapter 394) was amended allowing counties to permit interim uses through their zoning ordinances. This gives counties the same power as townships and cities. Interim uses are defined as a “temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.” Conditions may be set on interim uses. Interim use applications require notice to nearby property owners (within a ¼ mile and nearest ten properties) and a public hearing before approval or denial by the review body. 2008 Session Law Chapter 331 amending Minnesota Statutes 2006, sections 394.26 and 394.303.

**Open meetings:** All closed meetings of public bodies must now be electronically recorded at the expense of the public body and the recordings preserved for 3 years. Closed meetings permitted under attorney-client privilege are exempted. The recordings are subject to the data practices law and the primary use of the recordings is for judicial review in open meeting lawsuits to determine if the meeting was properly held as closed. 2008 Session Law Chapter 335 amending Minnesota Statutes 2006, sections 13D.05 and 13D.06.

**State Building Code:** The State Building Code was changed to limit the ability of local units of government from opting out of the Code. If a city, county, or township adopted the Code prior to January 1, 2008, it is barred from repealing the Code and must continue to enforce the Code. Exempted from this requirement are municipalities with a population of less than 2, 500 located outside the seven county metropolitan area, which may choose to adopt the Code or not adopt. 2008 Session Law Chapter 322 amending Minnesota Statutes 2006, Chapter 16B, various sections.

**Wind tower siting:** The owners of wind energy conversion systems of less than 25 megawatts qualify as small wind energy conversion systems if, by July 1, 2009, the owner so elects and submits a completed application for zoning approval to the county in which the project is to be located. The owner must also notify the Public Utilities Commission when the application is submitted. 2008 Session Law Chapter 296, Sections 18, 19, and 28.

**Vacation rentals:** The legislature funded a study to determine the extent to which private homeowners are renting property under improper tax classifications (such as homesteaded property) and without meeting public health requirements for rentals. Explore MN Tourism will conduct the study to be completed by January 2009. Recommendations may be made on consumer protection needs, tax compliance measures, and public health compliance. A goal is to define and promote vacation rental lodging in Minnesota. 2008 Session Law Chapter 291.

**Rulemakings of interest:**

**Alternative shoreland regulations:** The Minnesota Department of Natural Resources (DNR) is expected to issue draft rule changes to 2006 Minnesota Rules Chapter 6120 implementing the alternative shoreland management standards developed in 2005 as part of the Governor's Clean Water Initiative. To keep abreast of the proposed rules, visit the DNR website at:

[http://www.dnr.state.mn.us/waters/watermgmt\\_section/shoreland/shoreland\\_rules\\_update\\_project.html](http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/shoreland_rules_update_project.html)

**Docks:** New legislation requires DNR to undertake dock rulemaking to be completed by January 2010. Rulemaking shall consider structures allowed in public waters and permits for these structures. Funds were appropriated for the task and DNR may couple this with the shoreland rules update. 2008 Session Law Chapter 363, Article 5, sections 4 and 31.

**What can we expect during the 2009 Legislative Session?**

**Interim zoning ordinance/moratorium:** The 2008 session included an effort (SF 1088/HF1254) to eliminate the ability of local government to use moratoria or interim zoning ordinances. The effort was defeated as interference with local decision-making. The Association of Minnesota Counties and other associations committed to work with the House Local Government Committee to determine if there is acceptable language. If you are interested in this issue, please consider joining the MnAPA Legislative Committee. Such a limitation would make proactive planning difficult and would cause communities to "rush through the planning process" as predicted by the United States Supreme Court in [Tahoe-Sierra Preserv. Council, Inc v. Tahoe Regional Plan. Agency](#), 535 U. S. 302 (2002). In this case the Supreme Court upheld a community's right to impose a moratorium and denied the claim that the moratorium was a compensable regulatory taking. To quote the decision "In fact, the consensus in the planning community appears to be that moratoria, or "interim development controls" as they are often called, are an essential tool of successful development."

**Nonconforming lots:** Additional changes in nonconforming lot rules, particularly on the issue of contiguous adjacent ownership of nonconforming lots in shoreland areas are likely to arise in 2009 since legislation was introduced in both 2007 and 2008. After the effort in the 2008 legislative session (several versions of bills were introduced), stakeholder organizations such as the Minnesota Department of Natural Resources and local government associations agreed to discuss the issue during the interim before the 2009 session.

**Watershed basin districts:** 2008 House File 2536 is likely to be reintroduced in the 2009 legislative session. The bill would create watershed districts statewide and require districts to create basin-wide management plans. The watershed basins as created might have some powers over existing watershed management organizations.

Sources: Association of Minnesota Counties, *Legislative Session Summary 2008*; *Bench&Bar of Minnesota*, July 2008; League of Minnesota Cities, *2008 Law Summaries*; Minnesota Bar Association Public Law Division Newsletter; Minnesota Revisor of Statutes website <https://www.revisor.leg.state.mn.us/pubs/>; MnAPA Legislative Committee members

**Want to stay on top of new legislation? Consider –**

- 1. Joining the MnAPA Legislative Committee (contact Jean Coleman to join, 612-588-4904, [jcoleman@crplanning.com](mailto:jcoleman@crplanning.com))**
- 2. Setting up a personalized tracking service at the Minnesota Legislature “My Bills” website.**

<http://www.house.leg.state.mn.us/leg/billslogin.asp>

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